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PUBLIC MEETING

UNITED STATES WAREHOUSE 2000

10 January 23, 2001

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United States Department of Agriculture
1400 Independence Avenue, S.W.
Jefferson Auditorium, South Building
Washington, D.C. 20024

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P R O C E E D I N G S

(9:15 a.m.)

MR. GILL: Good morning, everybody. You'll hear from me in a couple of minutes, but I'll turn this over first to Alex King, our Deputy Administrator.

MR. KING: Thank you, Steve. Good morning, and welcome to the Department of Agriculture, the people's department. I see so many familiar faces I think I'm just going to take the liberty and just say hello to a few, and I don't want the others to think that they're being slighted, but I saw my former boss, there she is, Vicky. Vicky Hicks. We owe a lot of thanks to Vicky for what we've got here today.

I thought I saw another former Deputy Administrator Commodity Operations here, Gary Martin. Gary, would you stand, please? Again, welcome, and wait, Bill Stubblefield. Where's Bill? We spent a lot of time on the telephone probably what, 10, 12 years ago, but this is the first time we've got to meet each other, but it's good seeing you, Bill, after all those telephone conversations.

I saw Kendall in here, and the list goes on and on, Louis Baioni, and again thank you, and I want to take time, or to thank you for taking time from your busy schedules to be here with us today as we begin

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implementing the newly enacted United States Warehouse Act.

As many of you know, it has taken us over 3 years to see the passage of this new legislation, and we

5 appreciate the fact that many of you were with us all the
6 way. We also appreciate your support for the changes and
7 opportunities that the new act offers. There are a number
8 of things in life that one can do alone. However, getting
9 this new Warehouse Act through Congress and enacted was
10 not one of those things.

11 Again, I want to express my sincere gratitude to
12 all of you for your help along the way. We face many new
13 and exciting opportunities and challenges as we go through
14 the process of implementing the new Warehouse Act.
15 Included in those challenges are establishing electronic
16 warehouse receipts for all commodities, developing other
17 electronic documents that will allow for paperless flow of
18 commodities from the field to the end user.

19 Also included will be implementing electronic
20 data interchange procedures that will increase our
21 efficiencies and speed up the warehouse examination
22 process so that you can service your customers with
23 minimal disruption from the Federal warehouse examiners.

24 Also included will be expanding the customer
25 base that is affected and serviced by our operation.

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1 Also, providing services that your various
2 sectors of the business world want and need to increase
3 your efficiencies.

4 I will be leaving Washington this morning and
5 going to Kansas City, but you're going to be in good hands
6 with my very capable and -- I can't find the words to
7 fully describe it, but under the very capable hands of
8 Steve Gill and his staff.

9 I want to thank Steve Gill and his staff for
10 putting this meeting together to provide everyone here
11 that will be affected by the United States Warehouse Act
12 an opportunity to voice their thoughts and to hear
13 comments of each of the business sectors that are
14 represented today. I hope that all of you will openly
15 participate in the discussion today and will continue to
16 submit ideas and opinions as we work our way through the
17 regulatory process. Again, thank you for joining us
18 today, and we look forward to working with you in the
19 future.

20 MR. GILL: Thank you, Alex. Can everybody hear
21 me? I, too, have to reiterate what Alex said here in
22 thanking you for taking time out of your busy schedules to
23 come in this morning and hopefully spend a fruitful
24 Government meeting with us this morning and this
25 afternoon, for those of you who can stay this afternoon.

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1 We appreciate everything you've done for us up to this
2 point, as Alex has pointed out.

3 He mentioned it took 3 years to get to where we
4 are today. It actually has taken us longer than that.
5 The 3-year process was starting the document through the
6 formal clearance process at the Department of Agriculture,
7 but before we could have a document we needed some
8 dialogue.

9 I do want to recognize just a few folks who

10 helped us get that dialogue started, starting with Steve
11 Nikkelson, if Steve could stand up. Steve was very
12 instrumental in getting us talking about what we needed to
13 do, especially after the statute was amended in 1992. We
14 were not able to do this by ourselves.

15 I also want to introduce the Washington staff
16 and the Kansas City staff. Those are the folks that are
17 going to actually help implement the new statute that we
18 got. Starting with the Washington staff, Roger Hinkle
19 here in Washington heads up our Licensing Authority
20 branch. We have in that branch Judy Fry, Dale Vaughan,
21 Rick Wittle.

22 We also have from Kansas City Dick De Fries,
23 Deputy Director of Kansas City Office, and we have Ned
24 Burkman, Kansas City Commodity Office, Dave Kirkland, who
25 I'm going to ask to say a few words here shortly, and last

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1 but not least, probably the most important component of
2 our operation, Robert Holdmeier, one of our field
3 examiners who actually goes out and does the work.

4 Thank you for coming this morning.

5 We're really excited about the fact that we now
6 have a new statute that we have been struggling for along
7 time to get. We weren't able to do it by ourselves. It
8 was quite a coalition to get us to where we are this
9 morning. We had a lot of assistance from the cotton
10 folks, the grain folks. I'm not going to stop and mention
11 names because I would leave somebody out, but we do
12 appreciate the fact that we also were able to work with
13 the congressional folks. I know Michael Knight, I saw him
14 this morning. I'm not sure who else is here from the
15 Hill, but we had a lot of support on both sides of the
16 Houses to get the statute to where it is at this point.

17 You see the agenda there.

18 (Slide.)

19 MR. GILL: You see the agenda there. What we're
20 going to try to do is work our way through the electronic
21 commerce dialogues and discussion and break for lunch, and
22 then later this afternoon we will start addressing some of
23 the specific warehouse issues that were addressed in the
24 statute.

25 (Slide.)

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1 MR. GILL: For those of you who can stay with us
2 through the afternoon, we appreciate that very much. We
3 will hear from several presenters. One of the things
4 you're going to find out real quick, this is going to be
5 very informal. I've asked several folks to help me
6 throughout the presentation, not only Dave, but I'm
7 looking for OGC away in the back. Okay. John, Terry,
8 thank you for being here.

9 I was also looking for Ralph. Is he going to be
10 able to join us later in the day? Great.

11 You're going to be hearing from a lot of us. I
12 obviously don't have a lot -- you'll find out I don't have
13 a lot of the answers to the questions you may have, but we
14 do have the technical folks like David here. The legal

15 types of issues will quickly diverge to counsel, so we will
16 just go back and forth that way. You will see people
17 popping up and down.

18 As far as the ground rules in terms of what
19 we're trying to get done this morning, if you could,
20 before you leave, do sign in if you didn't sign in this
21 morning. If you have a business card please leave us your
22 business card. Once we get this thing started and get the
23 process in motion what we will do is to get back to you
24 for you to take a look at a proposed regulation once we
25 put that together, and so for us to keep in contact we

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1 would appreciate your name and also a business card if you
2 have it.

3 Also, if you have questions, if you're so
4 inclined we would like for you to use the mikes stationed
5 in the aisles, but it's real important, because this is a
6 public meeting, we do have a recorder or a reporter
7 sitting in the back, and it is important we get names, and
8 also it would help us if you would identify the companies,
9 or who you represent today.

10 Other than that, I think what I would like to do
11 is explain why we asked you to come. To us, there's three
12 things I would like to get done during the day.

13 (Slide.)

14 MR. GILL: The whole key component to this
15 session is getting information. For us this is a fact-
16 finding type of a meeting. We would like to share some
17 information with you, but, just as important, we would
18 like to get information from you folks in terms of how
19 you're doing business, where you think your business
20 activities may be going in terms of electronic commerce,
21 and if you can share some of that with us.

22 When we got -- I have to say that when we
23 started this whole process, started talking about it
24 internally here in the Department, we got to talking about
25 what the Department could do electronically. As early as

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1 the nineties, early nineties when we got electronic
2 warehouse receipts for cotton, at that time we thought
3 that we were sort of ahead of the curve in terms of
4 getting some dialogue started, trying to figure out where
5 the technology was going and what we could do and where we
6 would fit in in terms of electronic commerce.

7 We're at a point where we're playing catch-up.
8 Obviously you're already into electronic commerce. This
9 is your livelihood. You're in it day in and day out, and
10 so we're now at a point where we would like some
11 information as to how you're doing it, where our services
12 can fit in, where our provisions fit in, if they fit in,
13 and how we can help just keep moving that commerce along.

14 You're going to hear throughout the day some
15 concepts and some proposals. This for the most part
16 starts our rulemaking process. We didn't have the time or
17 luxury -- what we would have liked to have done is issued
18 advance notice of proposed rulemaking, which is a document
19 that will go through the rulemaking process and get in the

20 Federal Register that identifies to the public that the
21 Department is interested and thinking about putting
22 together a set of proposals, and in doing that, we've some
23 options we're thinking about doing but we're not quite
24 sure where to start or how to start or how to implement
25 it, so the advance notice sort of lays the groundwork for

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1 that. That is what this particular meeting is for.

2 Last but not least, before we break for lunch at
3 noon, what I would like to do is throw up a slide that
4 will give you some time frames in terms of things that
5 have to happen to get the implementation in by the
6 statutory deadline.

7 Real quick, just for those of you who are not
8 familiar with the Grain Standards Improvement Act of 2000,
9 there are three titles to it. Hopefully you got a copy
10 when you came in. The title we're going to be concerned
11 or going to be focusing on today is title 2.

12 (Slide.)

13 MR. GILL: It was passed by the Congress in late
14 October and the President signed it into legislation
15 November 9, and its goals, and the reason we set up the
16 meeting the way we have today, it's got two goals.

17 (Slide.)

18 MR. GILL: It's to accommodate electronic
19 commerce and also to address warehouse issues, and that's
20 pretty obvious why we set the meeting the way we did.

21 Okay, I guess I jumped ahead of you there. The
22 statute is set up to streamline and update the U.S.
23 Warehouse Act, hopefully make it more relevant to how
24 business is being done today, and specifically it allows
25 us to start focusing more clearly into how we can help

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1 facilitate the interstate and international commerce.

2 I forgot to introduce at the beginning, I would
3 like to mention one individual, Jonathan Cutler. If you
4 would stand up -- I don't know who came the furthest, but
5 Mr. Cutler is from the University of Greenwich in England,
6 who gets involved with international activities, and we
7 have been working together and Jonathan tries to get some
8 of the warehouse systems set up in several countries
9 overseas, so thank you for being here, Jonathan.

10 But that, again, the new statute allows us to
11 get into international and interstate commerce, and
12 specifically the goals are to -- it's broken down into
13 warehouse issues in the statute itself. The tight
14 turnaround on the statute -- David, if you could click a
15 couple of times --

16 (Slide.)

17 MR. GILL: Is anybody from OMB here? We invited
18 OMB this morning. I'm not sure they could make it. We
19 asked for a lot of things in the statute, and we got a lot
20 of what we had asked for in terms of language we were
21 looking for that allows the Secretary to do some things.

22 The one thing we didn't ask for -- I'm not sure,
23 Michael, why this got in there. These kinds of deadlines,
24 the statute requires us to have a proposal out to you no

25 later than February 7. Obviously we're not going to meet
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1 that deadline. And then it goes on to say that no later
2 than 180 days after the date of enactment we are to have a
3 final rule in place out on the street explaining how we're
4 going to do business no later than May 18. We're not
5 going to meet that deadline.

6 The deadline we have to meet is, the existing
7 statute expires on August 1. We have to be in place by
8 August 1, so that is what is driving us for the most part.
9 (Slide.)

10 MR. GILL: To accomplish that, while the statute
11 was modified and gives the Secretary a lot of discretion
12 and a lot of broad authority in setting up regulations and
13 how we're going to regulate electronic warehouse receipts
14 and other electronic documents, the one thing you're going
15 to find is, we're not going to build the infrastructure to
16 do that. It is not our intent in the Department to hire
17 people, to buy equipment, to get into the provisions that
18 we would like to get into. We're going to be looking to
19 private industry to do that.

20 We have been very successful in that concept,
21 and in following that with electronic warehouse receipts.
22 The cotton industry was successful in getting that concept
23 off the ground.

24 One of the things that quickly that came to the
25 forefront was how are we are going to do this, so the
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1 first -- and it shouldn't be a surprise to anybody when we
2 issue a set of proposed rules we're not looking to run the
3 systems. We're going to be looking to set the criteria,
4 or maybe the standards, like we do for cotton providers
5 that we'll get into here in a few minutes, but we don't
6 plan to build an infrastructure to pull this off.

7 Real quick, what I would like to do -- and in my
8 opinion the U.S. Warehouse Act has gone through three
9 phases. The first phase was when it was enacted in 1916.
10 That, at that point it allowed us to start doing business
11 with Federal and licensed warehouse operators, and while
12 the statute has been amended from time to time, a
13 fundamental revision to the statute was in the early
14 1990's, which Dave Kirkland is going to get into here in a
15 few minutes.

16 That expanded the services and also the people
17 we dealt with at that point. It allowed us to accommodate
18 operations and transactions that were happening not only
19 in federally licensed warehouses but also State and online
20 warehouses in terms of cotton, and obviously it brought
21 providers to the forefront in how we do electronic
22 warehouse receipts.

23 The third phase is the phase we're into this
24 morning, which is the new statute, the U.S. Warehouse Act
25 of 2000. It keeps and allows us to do business with those
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1 who have been there before, which is the federally
2 licensed, nonlicensed, and the providers.

3 (Slide.)

4 MR. GILL: But the language in the statute has
5 been broadened now, where the Secretary can promulgate
6 regulations with industries and businesses that don't
7 necessarily have to be tied to a warehouse operation or to
8 a warehouse operator, so we are entering a new phase for
9 the statute and for the Department, and we have yet to
10 create the first page and how this is going to work, and
11 that is why we've asked you here this morning, if you can
12 help us get started with that process and how we start
13 building that.

14 Real quick, David, if yo could turn --
15 (Slide.)

16 MR. GILL: Just a real quick history before we
17 make the quantum leap from where we've been and where we
18 are to where we would like to end up. To make sure we're
19 all on the same page, the U.S. Warehouse Act, when it was
20 enacted in 1916, it authorized the Secretary to license
21 warehouse operations, to store agricultural products.

22 It also allows the Secretary to license
23 qualified people to sample, inspect, weigh, and grade
24 agricultural product. This is not to be confused with the
25 official inspection services which FIS administers here in
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1 the Department, but primarily these licenses are to folks
2 who are hired by the warehouse operators themselves to do
3 business with that warehouse.

4 (Slide.)

5 MR. GILL: The U.S. Warehouse Act is voluntary.
6 It only applies to those who voluntarily apply for the
7 license. It is regulatory. If you do apply, then you're
8 agreeing to operate under the provisions and are subject
9 to the regulations that are out there.

10 (Slide.)

11 MR. GILL: It is intended to protect depositors.
12 The system is providing depositors with reliable
13 protection and providing a uniform set of regs or a system
14 for the storage of products, and it should firmly
15 establish warehouse receipts that possess real loan value.

16 (Slide.)

17 MR. GILL: To be licensed, federally licensed
18 under the statute you have to meet certain requirements,
19 financial, keeping obviously current and accurate records,
20 obviously operate a facility that is in good working order
21 and, most importantly, maintain the quantity and quality
22 of the stored product at all times.

23 (Slide.)

24 MR. GILL: We currently have a little over 1100
25 licenses. It breaks down to about 125 cotton licenses,

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1 1,000 grain, and 25 other licenses. We currently license
2 a few cottonseed warehouses, dry edible beans, peanuts.
3 Wool? Do we have any wool? We have a couple of honey
4 licenses, and so those are the others, and about 12,000
5 folks that carry licenses to inspect and weigh and grade
6 for the warehouses.

7 Okay, that's a little quick history. What I
8 would like to do is at this point start the dialogue, and

9 I'm going to ask Dave to walk us through the electronic
10 receipts discussion.

11 (Slide.)

12 MR. GILL: This is pulled right out of the new
13 statute, which states that the Secretary may promulgate
14 regulations that authorize the issuance, recording, and
15 transfer of electronic warehouse receipts.

16 At this point I'm going to ask Dave to walk us
17 through how it currently works for cotton. Again, unless
18 you tell us otherwise, and what we would like to know
19 after the discussion is, this is something obviously we're
20 going to start with in terms of looking at, in terms of
21 the other product, specifically the grain products, so
22 with that, David. Are there any questions up to this
23 point?

24 (No response.)

25 (Slide.)

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1 MR. KIRKLAND: Good morning. Some of the events
2 that have taken place to allow us to get to this point on
3 electronic cotton receipts. In November 1990 the United
4 States Warehouse Act was amended to include electronic
5 warehouse receipts for cotton. The act was again amended
6 in October of 1992 to further define the use of electronic
7 warehouse receipts. In August of 1993 the proposed rule
8 was published with a 60-day comment period, and then on
9 March 31 of 1994 the final rule was published.

10 (Slide.)

11 MR. KIRKLAND: First, to have electronic
12 receipts the first thing we have to have is a provider. A
13 provider is defined as an individual entity that maintains
14 electronic warehouse receipts in a central warehousing
15 system, meets the requirements at C.F.R. 735, and signs a
16 provider agreement with the Farm Service Agency.

17 (Slide.)

18 MR. KIRKLAND: The provider requirements, all
19 providers must have at least a net worth of \$25,000. They
20 have to have two insurance policies, one errors and
21 omissions, and another one for fraud and dishonesty. Each
22 of these policies must have a minimum coverage of \$2
23 million and a deductible of not more than \$10,000. Also,
24 each policy shall contain a clause requiring written
25 notification to the Farm Service Agency 30 days prior to

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1 cancellation.

2 (Slide.)

3 MR. KIRKLAND: All providers are required to pay
4 user fees to the Farm Service Agency. These fees are
5 announced in April of each year.

6 (Slide.)

7 MR. KIRKLAND: Providers are required to submit
8 an audit-level financial statement and an electronic data
9 processing audit each year. The electronic data
10 processing audit shall result in the evaluation as to
11 current computer operations security and disaster recovery
12 capabilities of their systems.

13 (Slide.)

14 MR. KIRKLAND: The provider's central filing
15 system must be operated and accessible to the users of the
16 Farm Service Agency 7 days a week, 18 hours a day, from
17 the hours of 7:00 a.m. to 6:00 p.m. The agency must be
18 notified 5 days in advance if these requirements cannot be
19 met because of maintenance. The agency must also be
20 notified if for unforeseen circumstances the central
21 filing system is not accessible for more than 5 minutes.
22 The agency must have unrestricted access to the
23 central filing system and all related backup files at no
24 charge.

25 (Slide.)

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1 MR. KIRKLAND: The provider's schedule of fees
2 must be filed with the agency. The fees shall not be
3 assessed to users in a discriminatory manner, and must be
4 in effect for 1 year. A 60-day notice is required on any
5 changes to the fees.

6 (Slide.)

7 MR. KIRKLAND: The providers are strictly liable
8 to the agency in its regulatory activities for losses and
9 costs incurred by the agency associated with a system
10 failure or lost, damaged, or improperly destroyed
11 electronic warehouse receipts.

12 (Slide.)

13 MR. KIRKLAND: The provider must maintain a
14 continuous log of all electronic receipt activities. This
15 log must capture before and after information on the
16 receipts records. The log is also to include detail of
17 any attempts to make unauthorized changes to the receipt
18 data.

19 The provider must keep electronic receipt
20 records for 6 years after the December 31 of the year in
21 which the receipt was canceled. The provider must also
22 furnish reports as requested by the agency to ensure
23 compliance with the agreement and the United States
24 Warehouse Act.

25 The provider must create daily two sets of

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1 disaster recovery records. One is to be stored on site in
2 a fireproof safe, and the other is to be stored off-site.

3 (Slide.)

4 MR. KIRKLAND: The provider shall ensure on-
5 site security of the computer hardware, software, and the
6 data.

7 The provider has to have a comprehensive
8 disaster recovery procedure approved by the agency and
9 perform a comprehensive test of the disaster plan twice a
10 year and report those results to the agency.

11 (Slide.)

12 MR. KIRKLAND: At the present time we have five
13 approved providers. They are Fambro Electronic Warehouse
14 Receipts, Incorporated, in Fresno, California, Plains
15 Cotton Cooperative Association of Lubbock, EWR, Inc., of
16 Memphis, Tennessee, Intelligence Storage Services,
17 Incorporated, of Raleigh, North Carolina, and Calcot
18 Limited in Bakersfield, California.

19 (Slide.)
20 MR. KIRKLAND: The definition of electronic
21 warehouse receipt is an electronic file in the central
22 filing system that contains at least the information
23 required to be included in a warehouse receipt by section
24 18 of the United States Warehouse Act and part 735.16
25 regarding a bale of cotton that has been identified to a
0021 holder.
2 (Slide.)
3 MR. KIRKLAND: Electronic receipts require -- at
4 a minimum contain the following record data elements, that
5 include the license number, the receipt number, the bale
6 tag number, issuance date, receipt status, cancellation
7 date, name of the warehouse, location of the warehouse
8 including city and State, the warehouseman, the location,
9 where the receipt was issued, including the city and
10 State.
11 (Slide.)
12 MR. KIRKLAND: Who the bale of cotton was
13 received from, the grade, which includes color, length,
14 micronaire, strength, leaf, and extraneous matter, or a
15 statement on the receipt that states, not graded at the
16 request of depositor. The net weight is to included, the
17 name of the person signing the receipt, the current
18 holder, the warehouse code, the paper receipt number if
19 applicable, and the terms and the conditions.
20 Terms and conditions contain a statement that
21 includes the insurance statement, lien statement, delivery
22 statement, incorporation statement, and whether or not the
23 receipt is negotiable or nonnegotiable, and any other
24 terms and conditions within the limitations of the
25 licensing authority under which the warehouse is licensed.
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1 (Slide.)
2 MR. KIRKLAND: The receipt may contain
3 additional information in the receipt record. This would
4 include data required by the CCC agreement that the
5 providers are required to sign in order for the receipts
6 to be placed under loan.
7 (Slide.)
8 MR. KIRKLAND: The definition of a holder is the
9 party who has access to the receipt record on the
10 provider's system. The holder is the only one who can
11 transfer the receipt to another holder, and a receipt can
12 only have one holder at a time.
13 (Slide.)
14 MR. KIRKLAND: To create a receipt, usually the
15 first thing that happens, the gin enters information.
16 This information could include the producer who owns the
17 cotton. It also provides the provider information on who
18 is going to be the holder, who has rights to that cotton
19 as far as who can market it or transfer the receipt once
20 it's sold.
21 That file is sent to the warehouseman. The
22 warehouseman enters that into their system, adds
23 additional data that is required, and then transmits this

24 file to the provider. The provider system receives that
25 data file, verifies the proper ID's and passwords, and

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1 then processes the file and creates an electronic receipt
2 if there are no errors.

3 If there are errors on the data or missing
4 information the warehouse is notified by the provider so
5 that they can correct whatever needs to be done and
6 resubmit the file.

7 The original receipt is issued in the name of
8 the depositor.

9 (Slide.)

10 MR. KIRKLAND: This kind of flows through how
11 the warehouse receipt issuance works. The warehouseman
12 computer contacts the provider system. The host checks
13 the security. It receives the issue receipts file from
14 the warehouse. It checks to make sure that all security
15 has passed. It then signs off the warehouseman. At no
16 time is the warehouseman logged on to the provider's file.

17 It actually passes the file, logs off, and then
18 the provider system takes that file and processes the
19 data. Once that data is processed, then the party that
20 issued the receipts is notified through mail or fax,
21 informing him the file was accepted and receipts were
22 issued.

23 (Slide.)

24 MR. KIRKLAND: To transmit receipts from one
25 holder to another the warehouse or the holder of the

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1 receipts creates a list of the receipts to be transferred
2 to another individual. At that point, he transfers the
3 file to the provider. The provider system checks
4 security, passwords, ID, in some cases Caller ID to be
5 sure the person who is trying to sign on the system is
6 allowed to be on the system.

7 Once that takes place, the provider system takes
8 the transfer file, changes the current holder to the new
9 holder, and notifies both parties that the transaction
10 took place, again a notification through the mail or fax,
11 depending upon how the providers set up their system.

12 These transactions are written to the providers
13 audit log. The audit log keeps track of all transactions
14 that take place on electronic receipts. Therefore, we can
15 go back and trace a receipts history from the time it is
16 issued until the time it is canceled.

17 (Slide.)

18 MR. KIRKLAND: Once a holder wants his cotton
19 shipped, he creates a loading order and a shipment file.
20 At that point, when he transfers his file to a warehouse,
21 the warehouseman is then made a holder. The warehouse at
22 the time of shipment notifies the provider system that
23 these are being canceled on this particular shipping
24 order, and again these transactions are recorded in the
25 audit log of the provider's system.

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1 (Slide.)

2 MR. KIRKLAND: One of the features of the cotton

3 system is that it will allow draft-to-bank transactions.
4 This allows the current merchant to transfer the current
5 electronic receipts to a bank to hold. He also sends a
6 file to the buyer. Once the buyer makes payment to the
7 bank, the bank will release receipts to the current buyer,
8 and the current buyer becomes the holder.

9 (Slide.)

10 MR. KIRKLAND: We've seen a large increase in
11 the number of users of electronic warehouse receipts
12 systems. The number of banks, coops, gins, merchants,
13 warehouses have more than doubled since the first receipts
14 were issued in 1995.

15 (Slide.)

16 MR. KIRKLAND: The percentage of electronic
17 receipts issued has increased from 45 percent of the 1995-
18 1996 crop to over 95 percent of the 1999-2000 crop.

19 (Slide.)

20 MR. KIRKLAND: One of the great benefits of
21 electronic receipts is, it has allowed us to perform
22 cotton exams in a more efficient and timely manner. We
23 have developed a program called WECS, warehouse examiners
24 communications software. This allows our examiners to go
25 into a warehouse, contact the provider, and download a

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1 file of all the warehouse obligations.

2 He is also allowed to import a file from the
3 warehouse manager's records, and it lists all the open
4 bales in his warehouse, which also includes the location
5 of those bales. At that point he is able to produce his
6 list for review that contains the warehouse bale locations
7 right on the printed sheet. It saves the examiner in the
8 warehouse from sitting down and finding the location of
9 each one of the bales that we want to location their
10 system manually.

11 This file also produced two exception listings.
12 It will identify any bale that's sitting on the provider's
13 system that is not sitting on the warehouseman's system.
14 It will also do the reverse, and locate any bale that is
15 on the warehouseman's files that is not on the provider's
16 files. This has greatly reduced the time that the
17 warehouse examiner spends in the cotton warehouses, and
18 allowed us to get in and get out and do a better job of
19 completing an exam.

20 MR. GILL: Thank you, David, and before David
21 takes any questions, and I have few questions to ask this
22 group, I have asked Joe Wyrick to say a few words
23 regarding what's happened over the last several years in
24 terms of providers, and how that has worked, and where he
25 might see this thing going, and I'll call on a few other

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1 providers in the audience. Joe.

2 MR. WYRICK: Thank you, Steve, and welcome
3 everybody. It's nice to see you this morning. I am Joe
4 Wyrick with the ERW, Inc., and that's a lot better with
5 the lights on.

6 We are provider, one of five, as mentioned, in
7 the cotton industry, and we have been operating since

8 1995, and the good folks at USDA asked me to take some
9 time and comment to you this morning on some things, based
10 upon our experience, which need to be taken into account
11 by this group and by others as we consider the types of
12 regulations that we need and want to see in the future of
13 electronic receipts.

14 With that in mind, today what I would like to do
15 is to provide you some ideas to provoke your thoughts in
16 three different basic areas, and not that these areas
17 cover everything, but I think they cover a lot.

18 The first area I would like to talk about are
19 the entities impacted by electronic receipts. Now, with
20 that agricultural background through the Cotton Council,
21 and everybody here has an ag background, we traditionally
22 think of entities that would be impacted as the producers
23 and the warehouses, obviously, the merchants, USDA, the
24 mills, but there are a number of other firms that have
25 been directly impacted by electronic receipts, and those

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1 folks and their interests are going to have to be taken
2 into consideration.

3 The most obvious to this group is probably the
4 banking and financial industry. Bankers have had to learn
5 to accept electronic receipts as collateral, and how to
6 use electronic receipts for bank drafts. In addition,
7 banks and financial institutions have learned that
8 electronic receipts cause what I call long distance
9 competition.

10 In the paper world, the producer or merchant
11 would typically go deal with his local bank down the
12 street, taking his paper receipts in for collateral.
13 We've seen an increasing trend, with electronic receipts,
14 of people in one State dealing with banks hundreds of
15 miles away for collateral purposes or for bank draft
16 purposes because those banks offer them better services at
17 cheaper prices, so the banks and financial institutions
18 certainly have impacted and are undergoing change.

19 The futures exchange in particular, NYBOT, the
20 New York Board of Trade for cotton is the exchange that
21 the cotton industry uses, has really taken hold and
22 accepted electronic certificated receipts. The exchange
23 likes the idea of a swift, reliable electronic delivery
24 system so that contracts can be fulfilled promptly.

25 The other thing that the exchange really likes

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1 is the audit trail that all of us providers are required
2 to keep. That audit trail allows the futures exchange to
3 go back and look at exactly what happened on what day,
4 when, and who did it. In those cases where controversy or
5 contention may come up because different traders say they
6 did different things, the audit trail allows a definite
7 way to prove exactly what happened, and to alleviate the
8 discussion.

9 Another entity to consider, State governments.
10 In at least three States with Department of Agriculture
11 groups, those departments have gotten involved in the
12 regulation of electronic receipts within their State

13 boundaries and, of course, it doesn't take a great leap
14 for you all to figure out some of these regulations
15 conflict directly with the Federal regulations, and I'm
16 getting a smile over here.

17 The next logical thing is, whose regulations do
18 you follow? That problem exists today, has not been
19 solved, and it is one we are going to have to look to and
20 address, because it is a problem. When we go, and I'm not
21 going to mention any particular States, but when we go
22 into some States and the warehouseman has two different
23 things he as to do, he wonders which entity is going to
24 arrest him first, the Federal Government or the State
25 government.

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1 Another group affected have been the software
2 vendors, the folks who write software for the ag
3 community. These people have been asked to integrate
4 additional functionality into their systems in order to
5 take advantage of the many things that electronic receipts
6 offer. As a result, they've had to do a lot of software
7 changing and modification, things that they normally would
8 not have done.

9 The final one on my list of entities to take
10 into mind or consideration are audit firms, financial
11 audits. CPA's have had to learn to accept electronic
12 receipts as assets or financial statements and as
13 collateral. Beyond financial audits, we are seeing an
14 increasing number of EDP audits, where firms are asking to
15 come in at their expense and assess the security of our
16 system for their user.

17 This trend is increasing, and we don't see
18 anything but more and more of it happening, so I'm sure
19 there are other entities that I have not included, but
20 these are the ones that have come to mind. Banks, the
21 future exchanges, State governments, software vendors, and
22 audit firms, all of these people are going to be impacted
23 by the regulations, and they're all going to want a seat
24 at the table when they're discussed.

25 It's going to be very important for us to

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1 embrace this group and bring them in so that we can talk
2 in a unified manner, because I can assure you they want to
3 think about regulations, and if we don't bring them in
4 they're going to come in anyway.

5 Now, the second idea I want to talk about are
6 trends that we've seen and, of course, lots of trends in
7 the computer and technology industry, but the first that
8 comes to mind, and the current rage, is e-business, or e-
9 commerce.

10 EWR has experienced increased requests, and I'm
11 sure the other providers in cotton have had the same thing
12 and if not you all correct me, for more and more
13 electronic documents on their system. We've had more
14 people ask us, can you put this on, can you put that on.
15 Not title documents -- we've already got the electronic
16 receipt -- but ancillary documents that serve the receipt
17 and make it easier to use.

18 We also, as everybody could guess, have seen
19 more use of the Internet. It's real interesting to us
20 that we did a survey 2 years ago of everybody in the
21 cotton industry that uses our system and found roughly a
22 third had Internet access at the time, and a similar
23 survey this summer that showed went up to 75 percent of
24 the people have Internet access, although only about half
25 of that admit to having expertise in using the Internet.

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1 Internet trading is growing. We've seen a
2 number of marketing firms developed just in recent months
3 in cotton and other commodities. It's going to be
4 important for the providers to interface with these
5 systems, and the question that we've got is, EWR, are you
6 neutral? What can you do to assure us as a trading firm
7 that you're not going to give our information away to
8 another trading firm?

9 his is a question that some of the merchants in
10 the group may recall we discussed back in 1994, to make
11 sure that merchants wouldn't get to see other merchants'
12 data. It's a legitimate question. It is one that needs
13 to be addressed, and it is a question of what to what
14 extent does a provider need to be neutral?

15 I have to, of course, mention in any discussion
16 of e-commerce the sophistication of hackers. In a
17 bookstore in Memphis this past weekend I found a book that
18 had a group of scripts, and all you did was type these
19 things into your computer go to the Internet, pick a web
20 site, run the script, and it would tell you whether you
21 could break into that site or not. This is an off-the-
22 shelf book. You don't have to have any computer
23 knowledge. You do have to be able to use your keyboard.

24 The point of this simply is that hacking is
25 becoming more and more sophisticated, and more and more

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1 people are doing it. This is going to be a real challenge
2 to providers to have the security in place to stay one
3 step ahead of these folks, and it's not easy, when yo can
4 go to Barnes & Noble or Borders, like I did, and pick up
5 books on how to do, how to break into your friendly web
6 site.

7 Another trend that we've seen is what I call
8 intercommodity interest. There's probably a better term
9 for it than that, but basically people who are using
10 electronic cotton receipts, particularly producers, have
11 contacted us and asked if it's possible to have electronic
12 receipts, electronic bill documents for the other crops
13 that they grow.

14 For example, in cotton we have a lot of folks
15 who grow rice and soybeans and I've had many of those
16 folks say, hey, I like electronic receipts in cotton.
17 They work great. Now I would like to do it for all my
18 crops. I want electronic title for rice, for soybeans,
19 for whatever else they're growing.

20 So you're going to see a cascade, I believe. I
21 believe that's going to be the trend, as these people who
22 have a taste of electronic receipts want to spread it

23 across everything they do.

24 One final trend that I would find worth
25 mentioning is that we have noted and been contacted by

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1 nonprogram commodities who are intersected in electronic
2 receipts. A great example is coffee. Coffee is imported.
3 It's not grown in the United States. It's handled in
4 public warehouses. It's also traded on the New York Board
5 of Trade, just like cotton, and they've seen cotton
6 electronic receipts, and now the coffee industry is asking
7 how can we also do electronic receipts?

8 As we look to developing regulations, one of the
9 things that this group will need to consider is, do we
10 provide some way for nonprogram commodities, non USDA
11 program commodities to be involved? Can we provide, does
12 the law even permit it? Certainly the interest is there,
13 and we're seeing it increasingly.

14 Now, the third and last idea that I would like
15 to go over is what I call unexpected, the things that we
16 did not expect back in 1994 and 1995 when we first started
17 up electronic receipts. I have notes that I looked up
18 last week in preparation for this meeting that went back
19 to 1994 and 1995, where we had similar meetings hosted by
20 USDA, and a number of speakers in those meetings in the
21 mid-1990's were pretty confident that it would take five
22 full years before electronic receipts would dominate the
23 cotton industry.

24 Well, it worked a little faster than that, but
25 the second year of operation, two-thirds of the industry

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1 were using electronic receipts. By the third year it was
2 approaching 90 percent, except the acceptance of
3 electronic receipts in cotton proved much faster than we
4 expected, and probably will so in other commodities, too.

5 We also did not expect the diversity of users
6 that we have encountered. We found people that use
7 electronic receipts with everything from old DOS 3.3
8 systems out there all the way to the latest, greatest,
9 leading-edge technology, and this diversity has only
10 increased as new networking software, as new operating
11 systems like Linux become available on PC's, this
12 diversity grows and grows.

13 We try very hard to service all these people,
14 but it becomes increasingly difficult when we have a
15 broader and broader group that we have to try to provide
16 to and not to discriminate against anybody.

17 It may be that we want to consider whether we
18 have the right, or want the regulations to set some
19 minimum standards. That's something we might want to
20 consider, because it will be very difficult, when you look
21 at nondiscrimination clauses in current regulations, for a
22 provider to be all things to all users.

23 We did not ever expect the audit log that we
24 keep to be used to the extent that it is. When we first
25 came up with an audit log we thought it was something that

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1 would simply record every transaction on a receipt, and we

2 would put the information on a tape, put it away for 7
3 years, and then throw it away. That's not what's
4 happened.

5 That audit log has become an essential piece of
6 our operation. We are constantly finding uses for that
7 from users who want to know what happened to what receipt
8 when, and it's a good reference that proves exactly what
9 happens when, not just for court cases, not just for legal
10 matters, but people trying to figure out what they did, or
11 what went on, so the audit log is something that probably
12 originally was envisioned, Steve, for backup purposes, and
13 in turn has turned out to be something that is a readily
14 used feature of the system.

15 One of the final unexpected things that I will
16 mention is the current regulations under which cotton
17 receipts operate. Again, back in 1994 and 1995, when
18 these regulations first came out, we were trying to
19 operate under them. I remember conversations with folks
20 about how these would probably have a couple of years,
21 then we would have to go in and modify them.

22 The reality has been that the regulations under
23 which cotton currently operates have proven to be
24 extremely flexible and have worked well. Certainly they
25 can use a little fine-tuning. They've generally done a

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1 very good job for the industry, and that has also been
2 enhanced by the prudent and reasonable interpretation of
3 these regulations by the Department, so those folks who
4 put those regs together in the first place are to be
5 highly commended for their foresight to put together
6 regulations when there was no map to follow.

7 In conclusion, I have basically tried to point
8 out three things, that there are nontraditional entities
9 that we have got to start taking into account as we look
10 at these regulations, because they are going to be
11 directly impacted, and they're going to want to say things
12 that there are trends we have to consider, and that the
13 unexpected things, the things we never expected to happen,
14 in fact a lot of them did, and we've got to take that into
15 account, too.

16 Now, I offer these ideas for your consideration.
17 I believe that these ideas, plus the experience that we
18 have gained in cotton, will offer us a strong foundation
19 of knowledge on which to base future regulations, and for
20 the future use of cotton receipts and receipts in all
21 commodities, and that concludes my remarks. I appreciate
22 the invitation, and if there are any questions I'd be
23 happy to take them.

24 Thank you.

25 MR. GILL: Thank you, Joe. Before we go to

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1 questions, we have other cotton providers in the audience.
2 Any other words of wisdom that anybody else would like to
3 share? Yes, Allen.

4 MR. NEPPER: I'm from California. You can see
5 by the attire.

6 I'm Allen Nepper. Fambro Electronic Receipts

7 became a provider years ago and then decided this past
8 year to ante-up again, and what we have done is, we have
9 become an Internet-based provider. All of our software is
10 browser-based, and so what I wanted to talk about a little
11 bit is, as we look forward, I think we need to look at
12 what a provider can be and how the regulations fit against
13 that.

14 One of the things we're doing, and Dave was out
15 there, we provide an inventory management system as part
16 of our electronic warehouse receipt. We even provide an
17 interface for the gins in the cotton industry that the
18 bale is made at a gin, so that's when it first, if you
19 will, exists, or is substantiated, and then forward to the
20 warehouse.

21 So as we look at the regulations, what I would
22 like to be able to do is keep in mind that this provider,
23 talking about software and talking about application
24 service providers, or ASP's, what can it do within the
25 regulations, and what can it do that may not be within the

0039 regulations but is okay to do.

1 And the example is the warehouses, when they
2 come on our system as a merchant, sends them a shipping
3 order. They can then come on our system and print off
4 where the bale is located, all the ways they set up their
5 shipments. They can then come on and print up the bill of
6 lading, and they can then issue all of the shipping
7 documents that need to be done, and they can forward
8 information on to the other entities, being mills, or on
9 to other merchants, so when we talk about this, you have
10 to understand where is the firewall in the sense of this
11 information, so I want to perk you up on that.

12 The other thing we have seen is, in interfacing
13 with all of the other systems out there, being browser-
14 based is really a simpler task, and so the minimum
15 requirements we may need may be somewhat less minimum than
16 we know, because we've interfaced with Unix systems and
17 with AX-400 systems, with PC systems, and because it's
18 browser-based it doesn't have the hardware requirement.

19 The only other thing, too, that in adding to
20 this, the user, what happens when you become Internet-
21 based is a user can actually come online and do all of
22 their work while they're online and see stuff while
23 they're online versus the black box to black box, and that
24 brings up other levels of security, or whatever we need to

0040 address, but I want to bring that up, because being
1 Internet-based does have a twist to what we're doing in
2 the provider system.

3 MR. GILL: Thank you, Allen. Any other comments
4 from providers at this point? This is good. Thank you
5 very much.

6 MR. TUBB: I'm Joe Tubb of Plains. We've been
7 running a provider system for probably 11 years, and I
8 think one of the factors that made it work well for the
9 cotton industry in addition to the regulations was the
10 fact that FSA, the Commodity Credit Corporation, did step
11

12 up to the plate and adapt their systems to be able to work
13 with electronic warehouse receipts. I think that's one of
14 the reasons you see the 95-percent availability that you
15 see today. I think they ought to be complimented for
16 that, because I don't think they get many chances to hear
17 that.

18 The only thing I would like to add to what Mr.
19 Wyrick and what Allen had to say is, there's one point you
20 might be interested in, and that's all providers in the
21 cotton industry operate under a patent.

22 Plains Cotton has two patents for electronic
23 trading of goods for electronic cotton, and our intent was
24 not to stifle the cotton industry by any stretch of the
25 imagination, so we've licensed them to the National Cotton

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1 Council and then they sublicense it to the other providers
2 in the cotton industry, so for the grain folks and other
3 folks that are interested in getting into electronic
4 title, you might want to talk to us and contact me after
5 the meeting, or look at those patents. That's all I have
6 to say.

7 MR. GILL: Thank you, Joe. Any other comments
8 from providers?

9 (No response.)

10 MR. GILL: Assuming we get over the patent
11 issue, which for those who don't know, Ralph Hinden walked
12 in a few minutes after we started, from the Office of
13 General Counsel, and we will probably defer several of
14 those issues to our friends at OGC. You have heard a lot
15 of things from three providers, and a little bit of what
16 you saw on the screen. What I'm hearing is, whatever
17 regs the Department comes up with need to be flexible and
18 broad to accommodate what's going on out there in the real
19 world, which we want to throw out this afternoon when we
20 get to some other issues.

21 MR. GILLEN: Steve, can you ask Ralph to give
22 his experience in the context that Joe Wyrick mentioned,
23 and how the Department has assisted (inaudible)?

24 MR. GILL: Neal Gillen has asked if Ralph would
25 come up here and address some of these things that evolved

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1 since we got into the electric warehouse receipts,
2 specifically on the legal issues, and how --

3 MR. GILLEN: Generally how he deals with
4 conflicts with the States relations.

5 MR. GILL: And specifically how the Department
6 deals with conflicts between the Federal regulations and
7 the State regulations. Ralph, you're on, and thank you
8 for asking that question, Neal.

9 MR. LINDEN: The first thing I would like to do
10 is to apologize to all of you that stopped by yesterday
11 and today and wanted to see me. I've been a little
12 preoccupied with other things outside the normal course of
13 business over the last couple of days. It's a little
14 chaotic trying to find anybody in charge.

15 Neal raises a very interesting point. There's
16 always this tension in the warehouse area between State-

17 licensed warehouses and federally licensed warehouses, and
18 one thing we have going for us is, we do have the Supreme
19 Court, which comes in real handy from time to time.
20 There's a Supreme Court case called Rice v. Santa Fe,
21 which came down, I believe -- correct me if I'm wrong -- I
22 think in the forties, I think 1946 or so, and basically it
23 laid out when Congress has entered the field in regulating
24 warehouses the Fed preempts the State.

25 The battle, as it always is in the preemption,
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1 is where does that line get drawn, and I think one thing
2 that I would call people's attention to -- well, two
3 things. What we're talking about in electronic commerce
4 activity is purely 100-percent voluntary. We're not
5 regulating. We're not calling the shots. We're not doing
6 anything. We're talking about, if you will, a third
7 legged system.

8 You've got the paper world that's been out there
9 since 1500 in the Statute of Frauds in England. That's
10 still out there, the traditional UCC. You have electronic
11 commerce that is out there, the Electronic Commerce Act
12 within, like, the last 18 months. That's out there.
13 That's fine. People can use it to their hearts content.

14 What we're looking at in the Warehouse Act is a
15 voluntary system where the Secretary will establish the
16 rules of the game, if you will, for people who want to
17 play in his game. It is not going to stop the States from
18 doing anything, but it's going to say, if you come into
19 our system, these are the rules.

20 If you come into our system, then the Federal
21 law is going to preempt the State laws, and I feel fairly
22 confident on that one when you look in section 3 of the
23 new Warehouse Act and it says, the Secretary shall have
24 exclusive power, jurisdiction, and authority to the extent
25 that this act applies with respect to each warehouse

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1 operator licensed under this act, but, more importantly
2 for the e-commerce, each person that has obtained approval
3 to engage in an activity under this act.

4 So we're looking at the provider area here, that
5 if you come into this voluntary system, that it's going to
6 be one size fits all, and what we're trying to get to is
7 competitive advantage for the competitors. We want true
8 uniform commercial law in the electronic world. We want
9 to be able to have a system in New Orleans and a system in
10 New York and a system in San Francisco all playing by the
11 same rules when it comes in terms of transferring title
12 within the system.

13 The one thing where the Feds aren't going to get
14 into and have no business getting into, and we don't to
15 get into at this point, is priorities of security
16 interests. The act is very clear that, if I can go back
17 to section 11 here and section (e)(8) -- excuse me. Not
18 (e)(8), (e)(5). If more than one security interest exists
19 in an ag project subject to electronic receipt or other
20 documents in this act, the priority of the security act
21 shall be determined by the applicable Federal or State, so

22 if you've got a State law out there calling the shots on
23 security interests, State law. We're not there.

24 The reference to the law gets into things like
25 IRS liens, those types of issues, but when it comes to
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1 doing the battle of, if you are in our system and which
2 law is going to prevail, Federal or State, we feel fairly
3 confident it's going to be a Federal law activity. If
4 you're not in the system, if you're not a federally
5 approved provider, State law all the way. We're not
6 there, don't want to be there.

7 In fact, I think our experience has been, if you
8 look at the State-licensed warehouse and federally
9 licensed warehouse, that competition is nice. It causes
10 Steve Gill to be honest, it causes the States to be
11 honest. The whole reason the providers seem to work
12 better is you have five providers. There's competition,
13 and competition means -- you know, it's kind of a long way
14 to get around to your question about how we're going to
15 address the Federal and State law. If it's a federally
16 licensed provider we're going to take the position these
17 are Federal rules, Federal preemption of State law, except
18 for security interests. If you're not in the system,
19 State law prevails. We don't want to get into their
20 territory.

21 Steve, I don't know if you want me to get into
22 some of the e-commerce things, States we've got. I will
23 be available this afternoon, and some of you have heard
24 this before, so people like Bill Stubblefield can kind of
25 fall asleep.

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1 VOICE: Before you start that, the purpose of a
2 regulated line, where does your jurisdiction stop
3 (inaudible)? Where does your authority stop?

4 MR. LINDEN: Phil's question is, where does
5 authority start and stop in terms of a regulated
6 commodity? If it's in the interior of the United States
7 then it's a corn shipment, and it gets to the steamship in
8 New Orleans, where does our jurisdiction end? I will
9 address that as we go through this, because that is really
10 fundamentally key to what we're trying to do in this
11 exercise.

12 Two and a half years ago we were yelling and
13 screaming that we needed to be paying attention to
14 electronic commerce and, as some of you know, we might get
15 three people who would listen to us, and we love you for
16 that. A year ago we got up to about 28 people. Then
17 about 6 months ago there was about 6,000 people.

18 It's amazing, with the explosion of the e-
19 commerce all of sudden businesses have started coming to
20 us and help us. Before, we were trying to pull you along,
21 and now most of you have gone ahead of us, but what we are
22 trying to get to when we started this thing 2 years ago
23 was, a fluid transfer of commerce of ag commodities where
24 there's no paper involved, and an example we've been using
25 is, when you sell that, you get that the corn in the field

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1 in Wisconsin, deliver it to an elevator in Wisconsin, it
2 gets on the railroad in Wisconsin over to the Mississippi
3 River onto a barge, a barge down to New Orleans, into an
4 elevator in New Orleans on to the vessel that's going to
5 Jakarta, the game is to make sure every document along the
6 way is electronic.

7 We don't want to have any paper anywhere, and
8 when it gets on that ship, as long as it's in the
9 jurisdiction of the United States, we're good to go that
10 we have jurisdiction on it. When it leaves the United
11 States and gets to Djakarta we're going to be dealing with
12 the Djakarta law. We're going to be dealing with
13 Indonesian law.

14 As Bill has kind of set this up, there are
15 people in the United Nations community, the international
16 bankers, who are all working towards e-commerce once it
17 leaves this area, once it leaves the jurisdiction of the
18 United States.

19 The issue that is going to be the interesting
20 one for the bankers is when we issue a bill of lading, if
21 you will, on an ocean-going vessel and it gets to
22 Djakarta, and that poor person in Djakarta is being asked
23 to unload the vessel and say, give me the warehouse
24 receipt, and somebody plops out a laptop and says, here it
25 is. These people may not have seen an electronic

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1 warehouse receipt, and those are the issues that are going
2 to be, I would suggest, the next generation of concerns,
3 and it's going to be international jurisprudence, how
4 we're going to address that.

5 But right now, here in the United States, what
6 we're trying to get to in the system approved by the
7 Secretary that's all electronic, top to bottom, and
8 there's some interesting provisions, I would suggest, that
9 are in here that the Secretary has never had before, and
10 to be real honest, the people in Congress I think were the
11 ones that prompted us on this to a large degree to think
12 outside the box of how to solve where that paper document
13 is going to pop up, somewhere between Wisconsin and New
14 Orleans.

15 Maybe it's in Iowa, where suddenly someone is
16 not electronically based, there's a piece of paper out
17 there. How do you get that piece of paper back into the
18 electronic system, and that is what I want to try to
19 quickly talk through.

20 Key things, in fact, that people may not be
21 aware of. What's covered? Ag products. Ag products are
22 defined as commodity, as determined by the Secretary,
23 including processed products of an ag commodity, so we've
24 gone beyond the bale of cotton. We're into meat,
25 vegetables, processed vegetables, corn, corn products,

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1 anything you can think of that is an ag product, or an ag
2 commodity and a product thereof.

3 Again, it doesn't mean we're going to regulate
4 it. It means that there's an opportunity for people in
5 that area to come to us to take advantage of the system.

6 What documents are covered? Electronic documents means
7 documents that are sent, received, stored, or generated,
8 something that is created in a system by the Secretary,
9 and that's the key.

10 When you're going along out there and you've got
11 this paper document pops up, a bill of lading, a
12 phytosanitary certificate, it's paper, and suddenly the
13 whole system breaks down because we're trying to speed it
14 up with the electronic world and move everything
15 electronically. There's this piece of paper over here
16 that's going to move one of two ways. It's either Fedex
17 or by the mail, and that is what we want to get out of.
18 We don't want to have to wait for that document to get to
19 the end of the line.

20 So under this act, the provider approved by the
21 Secretary can in essence generate an electronic document
22 that duplicates the paper document, and that's the one
23 thing that I think where the Federal Government has to be
24 involved, is that somebody has got to be able to give
25 legitimacy to that document that was paper, that is now

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1 electronic, because the electronic document may be a bill
2 of lading, it may be something that is conferring title.

3 Private entities out there can't confer title.
4 That's a Government function. It's either a State
5 function or a Federal function, so what we have got to get
6 is in our very system the Secretary to be able to have a
7 provider approved to generate a document. It could be a
8 duplicate of a paper document. In fact, there's
9 provisions in here that say how you handle when there's a
10 duplicate document, and the electronic document includes
11 things that are sent by electronic data interchange,
12 telegram, telex, telecopy and, most importantly, e-mail.

13 So now for the first time you're getting into
14 things where an e-mail can take on some, I would suggest,
15 legal legitimacy that may not otherwise be out there. As
16 many of you may have encountered, we have had issues prior
17 to the e-commerce bill in Congress, what is the legitimacy
18 of an e-mail?

19 Some of you who went to law school may recall
20 under the Statute of Frauds, 1500 England, certain
21 documents have to be in writing. When e-commerce came to
22 the forefront in the 1860's with the first telegram, the
23 first telegram that went out that said, I want to buy your
24 commodity, or I want to buy your widget, that was all fine
25 and dandy. You couldn't close the deal. Some of these

0051

1 documents had to be in writing.

2 So we have been stumbling from 1580 to 1680 to
3 1990 with concepts that are 300 and 400 years old, with
4 terms of written documents, and this act gives it a chance
5 to get out of that.

6 It gives us the chance to address the issue of
7 electronic signatures. How are we going to handle
8 electronic signatures? There are other people in the
9 Government that are ensuring that all encryptions are the
10 same, but again you know, we're trying to get you all to

11 think about -- most of you I think are beyond us on this,
12 getting rid of paper. We want to be pure electronics.

13 The other, I guess, highlight in here is who
14 gets to play? Warehouses, providers. The warehouse world
15 is State-licensed warehouses, federally licensed
16 warehouses, and nonlicensed warehouses. This act makes
17 very clear that we're not out there stepping on the toes
18 of State-licensed warehouses in this area.

19 If the State-licensed warehouse wants to get an
20 electronic receipt under State law, we're not in the game.
21 We're completely out of it. If the State-licensed
22 warehouse wants to come to us and play in our game, they
23 can play in our game, for then they're not with the
24 States. But they can't be doing both. They can't today,
25 being federally licensed, issuing electronic warehouse

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1 receipts in the Federal system and tomorrow in the State
2 system. They're either in or they're out.

3 If you go over on the electronic provider side
4 of the equation, what we're talking about is a pure
5 voluntary Federal system, and we want to emphasize
6 voluntary. We're not telling anybody you've got to come
7 here, but what we're looking for is to set up a framework
8 for those that are in e-commerce, that are confronted
9 with, for lack of a better phrase, this junction between
10 State law and you're trying to move from Utah to New York
11 to Florida in the shipment, that we're in a position, with
12 electronic providers that we approve, I think, to
13 facilitate that, to set up one rule regardless of what
14 State you're in, except for the priority interest in the
15 banking rule.

16 Again, I'm not here to address that today, and I
17 think it's important when we told Steve when we get people
18 in this room I want to emphasize we need to hear from you
19 what you want, because we're not going to tell you what
20 we're going to do, because we don't know what we're going
21 to do. We want to know what you need to make your systems
22 work.

23 If you've got a system that's doing warehouse
24 receipts and you've got a system that's doing bills of
25 lading, you have a system that's doing grain inspections,

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1 a system like Larry McIlvaine has in our export credit
2 system, where documents are generated, our goal is to make
3 sure that the Secretary's -- it's not Steve's authority,
4 it's not mine, it's the Secretary's -- that all of these
5 are going to fit together in one system so we don't have
6 this juncture.

7 What you saw in the slides before, that probably
8 means a lot of attention being paid by the Department to
9 who our providers are. It's the providers may be doing a
10 lot more than -- in fact, I know they'll be doing a lot
11 more than just with the warehouse receipts, bills of
12 lading, phytosanitary, sanitary certificates, insurance
13 documents, anything it takes to move a commodity, and the
14 Secretary hopes to listen to you to tell us what we need
15 to regulate so they can have it, and I would encourage you

16 to send us those cards and letters. We usually don't want
17 to hear from cards, but we want cards on what do you want,
18 what do you need to make it happen.

19 Before I ramble on, Steve, I'm going to shut up
20 and see if there's any questions.

21 MR. GILL: What Ralph has done, he's brought
22 into the discussion the other electronic documents, and we
23 did have a few slides, but to keep this thing going we're
24 now getting to a point where we've been talking, we
25 started with electronic warehouse receipts, we're now

0054 1 talking about other electronic documents.

2 You heard Joe and others bring up some things
3 we need to start thinking about here in the Department.
4 Between nonprogram crops, what is an agricultural product,
5 and hopefully you picked up some material outside, where
6 under Larry McIlvaine's and Ralph's program, GSM and the
7 other programs, there's like close to 200 products,
8 agricultural products in the Department, recognized under
9 the Department programs, and some of them are pretty weird
10 products, worms, the alcohol beverages, antlers, wood
11 products, the processed type, so please, before you leave,
12 if you haven't, pick up that list.

13 Yes, Neal.

14 MR. GILLEN: I have a question for Ralph. One
15 thing on e-commerce (inaudible). What is the Department
16 doing about that?

17 MR. LINDEN: Neal's question is, dealing with
18 electronic commerce top to bottom, is the question of
19 sanitary and phytosanitary certificates, which are
20 generally Department of Agriculture for agriculture
21 commodities. There are people in the Department dedicated
22 to getting totally on board on that.

23 The reality is, it's just a matter of time, and
24 it takes, I think all of them have learned that in trying
25 to do electronic warehouse receipts it takes way longer

0055 1 than we ever thought it was going to just because of the
2 programming, just because of all of the computer
3 activities. It's easy to sit down as a lawyer and write a
4 document on paper. The problem is trying to get it into a
5 computer-based system.

6 I know that Jim has been trying for, what, 7
7 years, to get their documents in an electronic base. I
8 don't know if Gypset is hiding in here today or not.
9 Gill, is FGIS there this morning? They're doing a pilot,
10 I know, on one of their documents, but I'm not sure where
11 it is.

12 MR. LINDEN: The Department has been trying to
13 get out of paper. As much as sanitary and phytosanitary
14 are at issue -- Larry, hold up your hand. How thick is
15 your pile of documents when you do an export credit
16 guarantee program, when you do CCC's back in the financing
17 of a shipment of corn, 1 inch or 2 inches?

18 VOICE: Well, first of all there's an
19 application that they come in for sale, and there's
20 evidence, the export has to be reported. These aren't

21 really documents I think, because they are -- and what I
22 want to say, they're not really documents that are being
23 sent in here. They are reports, basically.

24 The next phase, though, is when you get into, if
25 there's claims or anything like that, and that is where we
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1 get into the documents on the export credits sent. If
2 there's a claim, there has to be a bill of lading and a
3 number of other documents, invoices and stuff like that,
4 so that's where you really get into the documents on the
5 export credit part.

6 Prior to that, though, just getting the sale and
7 everything, ordinarily we don't request too many
8 documents, but it's still paper flowing in. Evidence of
9 exports, we get something like 40,000 a year. We are,
10 though, working on a system, and we hope to have it in
11 place by the end of this fiscal year, at least phases of
12 it where we can electronically -- the exporters can
13 electronically report their sales to us and they can also
14 electronically file their evidence of exports, these
15 40,000 documents we get a year.

16 If they go astray, they say they've been filed,
17 we don't have a record of it. We hope once we get into
18 this, that will take care of that. But with regard to
19 documents, it's only when you get into the claim issue and
20 something goes bad.

21 MR. LINDEN: And I think that's important.
22 Joe's talking about the audit trail. The sections the
23 Government worries about are audit trails. If we've got
24 money involved, we want to know where the money went and
25 that the transactions happen properly, and I would imagine
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1 as we get into this e-commerce document scheme, including
2 the warehouse receipts and the whole 9 yards, I think that
3 the audit trail that the provider is going to have is
4 probably going to be our biggest benefit, because we'll be
5 able to turn to the provider at any point in time.

6 How we get all of the documents on one system is
7 Herculean, because everybody in the Department wants to do
8 their own thing, and I kind of feel somewhat like a
9 hypocrite, after trying to encourage you to say, well, we
10 want you in our system to talk to each other. We can't
11 get everybody in the same room in the Department to talk
12 to each other, and there is a chief information officer in
13 the Department of Agriculture who is charged with being
14 sure we do speak to each other.

15 Those are the issue we're going to be addressing
16 hopefully over the next 6, 7 months, but the one that is
17 going to come up for all of us is the difficult area,
18 electronic signatures. The question is going to be, how
19 is the trade going to feel comfortable showing that a
20 document is transferred from A to B or from B to C in an
21 electronic environment because right now you usually have
22 signatures. Somebody signs something. It may be
23 illegible, but at least there is something signed, and
24 that is the one we're struggling with to ensure that the
25 banks, the insurance companies, everybody is comfortable

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1 with encrypted signatures.

2 E-mails look great when you're sending notes
3 back and forth, but they don't really tell you who
4 actually -- you don't really know who's sent the document,
5 you don't know who received it, and so you've got to have
6 this issue about how you're going to have an electronic
7 signature in your environment. How will that work, or
8 will the provider say, because I know you people so well
9 and we've got a separate agree you don't need a signature,
10 we will take your e-mails, and those are the issues that
11 we don't have an answer for but need you to tell us how
12 your different businesses are going to talk to each other.
13 How are you going to keep this thing totally seamless?

14 I know there's a lot of problems we had, but
15 Neal and I have gone through, I think, two bankruptcies
16 over the last 10 years that have caused us to take pause
17 on occasion. One is called Julian Cotton in the late
18 eighties, early nineties, and then most recently Sea
19 Island Cotton in Georgia, and I think you'll find because
20 of the litigation you're going to see our shop suggest
21 that we may have to make some modifications where we
22 currently have the warehouse receipts. We've learned, and
23 you learn sometimes because you lose.

24 And there's issues about, bankruptcy courts are
25 throwing some curves at us about what is a holder and what

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1 are the priorities. We have to address. Again, that is
2 why it's so important for you all to tell us what your
3 priorities have been, because we don't know.

4 MR. GILL: While Ralph is still here and before
5 he leaves real quick what I'd handed Ralph was to answer
6 Larry's question.

7 I had asked Mark what kind of paperwork does it
8 take to export a product, and the screen we have up
9 here -- and I don't know if you can see it in the back,
10 but the department, if you're going to export flour to
11 Angola, here's what the Department of agriculture requires
12 in terms of what you have to file with the Department to
13 move the product, and that's just the Department of
14 Agriculture.

15 What you're hearing, or at least conceptually,
16 obviously we're going to start with what we know best in
17 terms of trying to write sort of draft regulations in
18 terms of electronic warehouse receipts and other
19 electronic documents. We envision a system or systems
20 where, as information is entered, it's all entered into
21 one data base so that when someone needs a warehouse
22 receipt you push a button and out comes a warehouse
23 receipt. If you need a scale ticket, the data is already
24 in the data base, so you would just simply push that
25 button and you get what you need out of the system, out of

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1 the data base.

2 What we're envisioning is a system that is
3 flexible enough that you only enter the data once and it's
4 being created wherever it's being created, whether it's

5 from the gin to the warehouse or warehouse to the farmer,
6 when a farmer delivers the corn to a house, that's the
7 sort of record we're talking about, that it all gets into
8 the data base.

9 So what we're envisioning is eventually
10 somewhere down the road we have a data base, and whatever
11 the user requires or needs you just punch it out.

12 Getting a little bit to Neal's question, where
13 are we with trying to expedite and continue to move the
14 cotton in terms of phytosanitary certificates, what do we
15 envision, and Ralph hit it a little bit. We have been
16 handed a new statute with some pretty broad authority for
17 the Secretary of Agriculture. We're not exactly sure yet
18 how far that authority goes. We're still in the learning
19 process. How far can we go? What are the legal
20 ramifications?

21 So these are things we're going to have to learn
22 as we go along. What we had envisioned was a system
23 where -- and I make the analogy to move documents. When
24 you drive up to a bank you put your documents in a tube
25 and the tube shoots it over to the building. We don't

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1 want to be -- we're not talking about the warehouse
2 statute dictating or setting the standards on those
3 documents in terms of what it takes to issue those kinds
4 of documents.

5 Rather, we want to set up the system where the
6 documents are required and it shoots over to wherever it
7 needs to go to, so in that regard, Neal, we're hoping that
8 when it's all said and done any document you have to touch
9 can't be funneled through a provider and just
10 electronically transmitted, and to get there we're going
11 to have to sit down with the APHIS and our sister agencies
12 first in the Department to talk about what is it you
13 require and how can we help facilitate this transaction.

14 We've got a long way to go. We're now trying to
15 find out how far the Department should go in keep coming
16 back. What do you need from us, what would you like to
17 see offered?I

18 MR. LINDEN: I think there's two things we
19 talked for in terms of the regs. One, I'm just kind of
20 talking about the ag interest and the banking interest.

21 The one thing, example that some of you are
22 tired of hearing, but we had a situation with the
23 Indonesian financial crisis where all of a sudden people
24 are selling commodities in the United States, they're
25 selling them in Indonesia.

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1 There were a couple of shipments where people
2 were real reluctant to have the big boat leave New Orleans
3 to get to Djakarta, to get unloaded and paid in Djakarta
4 where the currency was dropping 5, 10 percent a day, so we
5 had a letter of credit scenario.

6 It could be a letter of credit situation where
7 the bank in New York is going to confirm on the sale, but
8 the bank in New York wasn't going to issue the payment to
9 the seller until they had certain documents physically in

10 their hand, and what happened is, these documents were to
11 leave New Orleans on a Friday morning in order to get to
12 New York in the afternoon for payment to be made.

13 Well, it didn't happen. Fedex made it from New
14 Orleans to Memphis and got fogged in, and it didn't get
15 out of Memphis until Saturday. Sunday rolled around,
16 Monday, it gets there, it gets to New York, the documents
17 didn't get there before noon. They got there in the
18 afternoon. The bank considered them to be received on
19 Tuesday.

20 The ship is sitting in New Orleans. My
21 recollection is, it was between \$15,000 and \$18,000 a day
22 in demurrage because the plane got fogged in in Memphis,
23 and that is what we're trying to avoid here, and we want
24 the tube to go instantaneously. We want to get the
25 documents out there.

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1 One thing this act provides is, the provider can
2 generate electronic document. The act also says when
3 that document is presented the receiver has to treat it as
4 if it is written, so they can't say I'm not going to play.
5 They have to take it. So you get in a situation where you
6 get a reluctant banker who says no, I really want to do it
7 the old-fashioned way, which I can't imagine there's many
8 out there, but if there is, this gives the user of the
9 system the ability to say no, it is up there, it is legal,
10 you have to give credence to it.

11 So our goal is, we want to put Fedex out of
12 business. We want to put the Mead Paper Company out of
13 business. We want to keep these things moving along, but
14 the dilemma I have is how to craft a reg to do that.

15 People talked about the reg that's out there in
16 the warehouse receipts that was created out of whole
17 cloth. Everybody knew where we were going, and that's
18 good and bad. We need to probably put some things in
19 there we have learned by experience, but the dilemma I
20 have is, Canada is getting a reg cleared.

21 In the big Federal Government if we get a reg
22 through it's a miracle these days, and once it's through,
23 it's more of a miracle to get it changed, so one side of
24 me says that having done this for 18 years I'm going to
25 get it right the first time. I want to get it out of the

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1 building right so I don't have to look back.

2 The reality side of me says that's not going to
3 happen. I know that we're going to put something out and
4 we're not going to catch everything. That's where you
5 need to tell us where the problems are and where you need
6 help, because we need help in drafting this, and one
7 dilemma that seems to be working is maybe everything
8 doesn't go in the regulation, say. Maybe it goes in the
9 provider agreement.

10 Again, the provider is approved by the
11 Secretary. The Secretary says what all the rules are, not
12 the provider. The provider can do extraneous stuff over
13 here, but if you're playing with our stuff it's got to be
14 the way we tell you to play, and I'm leaning right now to

15 maybe we put more of the provisions of what we're doing in
16 the provider agreement that the provider has with the
17 Secretary.

18 Each of them could be a little different, and I
19 would imagine each of the providers may want to offer a
20 different service. I would imagine that shipping corn is
21 a little bit different than shipping cotton. There may be
22 niche markets where these providers aim for certain types
23 of commodities, certain types of transactions, and it may
24 be to our benefit and your benefit that those are more
25 detailed in the provider agreement so that when someone

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1 comes to use the system, instead of pulling out their
2 handy-dandy Federal Register with all the regs which
3 everybody carries around they would ask the provider to
4 provide a copy of the provider agreement.

5 The provider agreement would lay out what they
6 do and what the Secretary has approved, and that would
7 allow us to, on an individual adjudication basis, change
8 as opportunities change. I think all of you would have to
9 agree that the Government is not real good about reacting
10 to electronic invention. We're always slow to get there,
11 and again we want to keep this moving. We don't want to
12 slow things down. We just want to, for lack of a better
13 phrase, put that imprimatur of approval on. We don't want
14 to tell you what to do. We just want to bless it.

15 MR. GILL: I know I promised you a break, and
16 I'm not going to give you one so we can keep Ralph here.

17 VOICE: Does USDA plan on requiring the
18 signatures? What is the time frame? I represent the
19 community bankers (inaudible).

20 MR. LINDEN: Anybody who says they won't use
21 this for another 3 to 5 years are the same people that
22 said that on the warehouse receipts 5 years ago. It took
23 about 3 months, because as soon as their competitor does
24 it and it saves them money they get forced to do it, and
25 that is why I said the competition will probably drive

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1 things faster than you can handle, and the question was,
2 will we require electronic signatures?

3 When you have got the e-commerce act out there
4 that talks about electronic signatures, it's got to be in
5 a certain format. Utah, as I recall, was the first State
6 to come up with an electronic signature law, and it was
7 like, it was the greatest thing since sliced bread. It
8 was the forefront of technology 6 years ago.

9 It's now at the end of the line, because the
10 technology has moved on. My recollection is that the
11 Bureau of Standards was charged within the Federal
12 Government to come up with an electronic signature, one
13 size fits all, for the Federal Government to make sure
14 there was standardization.

15 The banking community probably actually is ahead
16 of us in terms of what they're requiring for electronic
17 signatures. In the provider agreements there's nothing
18 that would require that these transactions occur with an
19 electronic signature. The question is one of comfort for

20 people playing in the system. Are they going to want the
21 electronic signature?

22 There's a document that we have in the cotton
23 world called a 605. It's a power of attorney, for lack of
24 a better phrase, that can be transferred from one
25 individual to another. If that's issued to the first

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1 agent out there, let's say there's five other agents in
2 between, and the power of attorney designation doesn't go
3 with the agent, it goes with the cotton bale, how does the
4 provider know who is actually holding that power of
5 attorney at any given point?

6 People are going to be looking for signatures.
7 Sending an e-mail who is saying this power of attorney is
8 out there and I'm number 5, I've got it, I've just given
9 it to number 6, if I send the e-mail, the person on the
10 other end's going to say, well, I got the e-mail from this
11 building that says, you know, so-and-so sent it to me.
12 You don't know if he had authority to send it.

13 Those are the issues that the industry is
14 grappling with and we're grappling with, is how do you
15 authenticate a transmission, and I think at this point
16 again you see the holdover from 15(a). People want to see
17 a written signature. Now they want an electronic
18 signature, but the people are looking for a signature for
19 authentication, and I don't know -- I'm not bright enough
20 to say it's going to be electronic.

21 It may be a thumb print. It may be an
22 individual agreement that the providers have, but again,
23 that is what we need to hear from the bankers, and
24 probably the bankers and the bankers and the bankers,
25 because they're the ones calling all the shots, because if

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1 you don't get the money the sale is not going to go
2 through, so you have to work with the bankers and the
3 financial community about what is going to make your
4 customers happy.

5 VOICE: A follow-up question. (inaudible)

6 MR. GILL: I've a slide to throw up before we
7 break for lunch.

8 MR. LINDEN: Again, I think you're -- I mean,
9 normally I tend to be dictatorial in things and say, we're
10 going to do it this way, because we've just got to move on
11 and get going. This is one where it's 180 degrees the
12 other way. We really don't want to tell people what to
13 do. We really do want to have you tell us what you want,
14 because we want to just bless what you're doing.

15 We want to give you the legal coverage, cover,
16 if you will, so you don't have concerns about whether if
17 you're doing an electronic signature in Utah and it's
18 going to Maine and it's going over to Paris, is there any
19 legitimacy, and I know that Bill and I were up at the U.N.
20 last year and there's a real concern overseas in terms of
21 electronic documents. How do you transfer -- what's the
22 protocol going to be?

23 And again, that is being handled at the State
24 Department level in trying to come up with some uniform

25 international kinds of electronic signatures.

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1 MR. GILL: Ralph has hit on several issues, and
2 David, if you could throw up a different slide up there.

3 MR. LINDEN: Larry had a comment.

4 VOICE: Ralph, one of the things Mark and I have
5 been going over here, I'm a little confused on where there
6 is not a warehouse receipt specifically involved, does
7 this section 210 cover that?

8 Let's just get back to the food aid programs, or
9 whatever. Is this authority covered?

10 MR. LINDEN: I think Larry's got a good
11 question. Where warehouses are involved, the Warehouse
12 Act was a vehicle, a very convenient vehicle to get the
13 Secretary to e-commerce. The Warehouse Act really has two
14 things. It has 1916, regulation of the warehouse industry
15 in the Federal bailiwick, and that's still there.
16 Sprinkled throughout are these little magic things, e-
17 commerce, that don't have anything to do with warehouse,
18 but because warehouse receipts were the first game in town
19 we've worked off of that in the Warehouse Act.

20 So you will have situations in here where you
21 never see a warehouse receipt issued, and this act is
22 going to apply in a voluntary context. Remember, the
23 warehousing side is regulatory. The e-commerce part of
24 this is voluntary. You have a voluntary system. You may
25 have, and the statute is broad enough to cover moss and

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1 lichens. While lichen is an agricultural commodity I
2 don't think we're going to see a warehouse receipt on
3 lichen, but we may very well have a sales document where
4 there's a bill of lading involved. There might be a bill
5 of lading on canned hams.

6 Those are the types of things that could be in
7 here regardless of any warehousing activity, and that's
8 where we talked about what Mark and Larry have.

9 What's an ag product is a matter of great
10 debate. Those of you inside the beltway probably follow
11 with great interest the sanctions legislation involving
12 Cuba, Libya, North Korea, a big battle. What is an ag
13 commodity? Agricultural commodities are going to be
14 treated differently for sanctions.

15 Well, there's a big debate within the executive
16 branch what's an ag commodity. A 2 X 4 is an ag
17 commodity. Is rough lumber an ag commodity? I think on
18 the first two the answer is yes. I think we've gotten
19 into the ag commodity world.

20 What if you take two 2 X 4's and make an A frame
21 for a roof that's got 22 nails and a steel plate on it?
22 Is it now an ag commodity?

23 Those are the issues we're stumbling with about
24 how far can we go. Bulk commodities, semi-processed veg
25 oil, all of those are in the game. The question is, where

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1 does it quit being a processed ag commodity and become
2 something else?

3 I don't know if Bill Gillen's shirt is an ag

4 commodity. I never know if he's wearing cotton or
5 polyester. But those are the types of issues you're going
6 to get into.

7 You have ethanol. The alcohol itself is an ag
8 commodity. What if you blend it with gasoline? Is it 50-
9 50, 90-10? Where do you get into these issues?

10 Those are the ones that we're going to have to
11 struggle with on coverage, but the bottom line is that
12 it's very broad, and you don't have to be in a warehouse
13 to play in the game.

14 MR. GILL: I wanted to shoot real quick up here
15 our time frame. Ralph hit on the rulemaking process, and
16 what it takes to get a regulation out of the Department.

17 (Slide.)

18 MR. GILL: When you keep hearing, we get started
19 and help us, what we're going to have to do and quickly,
20 based upon the legislation, what we're hoping to do is
21 meet some deadlines, self-imposed deadlines. The last one
22 being, of course, the statutory deadline where by the end
23 of the month we want to continue the dialogue either
24 through letters, written comments, getting notices out to
25 the affected industries or interested parties.

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1 The second bullet is, we are available
2 throughout the rulemaking process for one-on-ones in terms
3 of coming out and doing something similar to what we're
4 doing here today as we progress throughout the rulemaking
5 process. We basically have to back into the August 1 date
6 so we are hoping to have proposed rules out at least no
7 later than March 24. That's pretty aggressive, because we
8 still have to get it through the Department and through
9 OMB, and you folks in terms of what we're going to put in
10 that proposed reg.

11 It will have a 30-day comment period, meaning we
12 could start analyzing and preparing the final regs as
13 early as April 24. We would like to get a final rule out
14 by June 20 so that we can -- that gives us 30 days to -- a
15 little more. It gets us about a month-and-a-half to do
16 business or send some documents out again, because it all
17 has to take effect August 1.

18 MR. LINDEN: It's important on that, too, to
19 point out those dates are more important on the regulatory
20 warehouse side of the street because the current Warehouse
21 Act is repealed as of August 1.

22 The electronic commerce part isn't regulatory.
23 It's a scheme we set up. It's voluntary. It's
24 discretionary in the Secretary to begin with, and
25 obviously we're going to do it, but I'm not as concerned

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1 about getting that August 1 date as a lawyer, I'm
2 concerned about hitting the August 1 date as a matter of
3 reality, because I need to get that part of the reg
4 through, and the warehouse part coming to an end on
5 August 1, that's going to create some pressure on OMB to
6 clear it, which means I'm probably can get the others to
7 go along with it.

8 That's why it's important we hear from you about

9 the broad concepts. What do you want in the e-commerce
10 world?

11 Steve, we talked about maybe breaking up this
12 afternoon to do e-commerce, and I need to run. I have to
13 go find a reg.

14 MR. GILL: Here's what we're going to do,
15 because you were kind enough to sit in here. Ralph has
16 agreed to lead the dialogue on e-commerce for us this
17 afternoon at 1:00, for those of you who are interested.

18 It's going to be in room 107A, which is the
19 administration building. You have to go to the third
20 floor, go through the walkway, and then we will reconvene
21 here at 1:00 to talk about specific warehouse issues that
22 are specific to federally licensed warehousemen, for those
23 who have any interest. We do want to throw out some
24 proposals that are specific to federally licensed
25 warehouses.

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1 Any more questions for Ralph as he's walking
2 away?

3 (No response.)

4 MR. GILL: Okay. Just to summarize real quick,
5 we're going to have to start writing a set of proposed
6 regs rather quickly, and you've heard me say this already.
7 We're going to start with what we know. We're going to
8 take a look at what is currently out there.

9 What I am hearing is a couple of comments that
10 the cotton reg, or the regs addressing the electronic
11 warehouse regs for cotton seem to have been working rather
12 well. There could be some fine-tuning.

13 I also heard they need to be, whatever we do it
14 has to be broad enough and flexible enough to accommodate
15 what is going on out there. What I'm suggesting, I guess
16 what I'm saying is you're going to see some pretty broad
17 set of regs, at least initially to start with, to get
18 something out there and to get our feet on the ground, and
19 to see, and then we can talk about adding things to the
20 regulations themselves.

21 This afternoon, you've already heard Ralph get
22 into part of the proposal. Maybe it's time we started
23 shifting some of the specifics of the regs into other
24 documents, the licensing documents for federally licensed
25 warehouses, the provider agreement in terms of providers,

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1 so our initial approach to this whole process will be a
2 broad set of regs, at least to get started.

3 Questions, comments?

4 The only other receipts we're familiar with, of
5 course, are the grain receipts, so that's where we're
6 going to start. What you heard as far as the process that
7 Dave walked us through in terms of what it takes to have a
8 provider and a bona fide warehouse receipt, other than
9 spinning that towards the specific characteristics,
10 quality factors, and use certificates of a particular
11 product, whether it be grain, corn, and wheat, we plan to
12 start with the same concepts that Dave walked us through.

13 Yes, sir.

14 MR. BOGGS: Good morning. My name is Charlie
15 Boggs, and I'm with APL. We operate liner vessels in the
16 international trade, and I was noticing a couple of
17 slides ago you had the requirements for the 416(b)
18 program, and if you might scroll back to that I would like
19 to address a couple of things.

20 As we know, the 416(b) program is so me of the
21 title I programs. A lot of the commodity that is moving
22 is bulk commodities, of course, and it appeared that the
23 requirements addressed probably quite adequately the
24 requirements to move bulk commodities, but, of course, the
25 416(b) being monetized and a lot of refinements, refined

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1 package products that are moving in this trade, and
2 packaged products that are a part of the title I
3 significantly a part of Food for Progress, and the type II
4 programs, what we would suggest to you is if this is the
5 requirement and it's rigid, it certainly doesn't meet the
6 needs and requirements for the movement of packaged
7 products in international trade, and I would suggest to
8 you that we put forward at least a parallel, or some type
9 of bridging mechanism that would identify those
10 requirements for packaged products versus bulk.

11 MR. GILL: Thank you. I appreciate those
12 comments. This was an attempt to just show you quickly
13 some of the documents we get involved with. We do
14 envision, whatever system or mechanism we come with, we
15 would like for it to be able to accommodate all of the
16 documentation, required transportation papers, the
17 financing papers, the program requirement documents, so
18 when we say documents it's a pretty broad category. What
19 is it you have to touch? What is it you have to move from
20 point A to point B? That's where we want to go.

21 So thank you for those comments. Basically we
22 have to sit down and start identifying it, and you have to
23 identify which of your documents in your business, so we
24 will look forward to that.

25 Yes, sir.

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1 VOICE: Will copies of the slides be available?

2 MR. GILL: We don't have extra sets here this
3 morning, but yes, they will be. They are available. If
4 you will just give me your name on a business card I can
5 give those to you.

6 I guess before I let you go for lunch, I want to
7 go back to get us Mr. Boggs question or concern. Again,
8 in terms of electronic documents, again we think of a data
9 base, and a data base should have all the information you
10 need to do business, whether it's electronic warehouse
11 receipts, or whatever.

12 What we're also envisioning, at some point where
13 we would like to go is -- and the e-dot companies may
14 already be there. What this statute does is, basically it
15 gives the Secretary of Agriculture the authorization to
16 become an e.com company. We're not going to go out and
17 buy the equipment or the infrastructure to do that, but
18 what we envision is a concept where we have two parties, a

19 buyer and a seller. They don't have to be domestic. One
20 can be domestic, one can be international. They want to
21 consummate a transaction, but it requires certain
22 documents.

23 What we envision is certain documents coming
24 through a provider concept, where the documents are
25 starting to get e-mailed. Not e-mailed, but

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1 electronically transferred to the provider of this data
2 base, and they start racking up -- in other words, there's
3 a firewall between the buyer and the seller. That is what
4 those little X's mean.

5 If you go to the next slide --

6 (Slide.)

7 MR. GILL: And as these documents are coming
8 into this date base they're held in suspense, like pieces
9 of a puzzle. They start to rack up against each other,
10 then eventually all of the required documentation is
11 there, in one focal point.

12 (Slide.)

13 MR. GILL: So when you have everything that
14 matches up, you have a simultaneous transaction between
15 the documents required and the payment that is required.
16 That is sort of how we envision something going down, and
17 you may already be there in terms of how you're doing
18 business. That is part of where we're wrestling in terms
19 of -- and we don't know your business as well as we
20 should, and we need help in setting this thing up. What
21 is it you're doing? How are you doing it? Is this a
22 concept, and if you're already there doing this, how does
23 the Department fit in in terms of facilitating it even
24 further? That is what we want to be able to help with.

25 Thank you for your attention. Any comments?

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1 Yes.

2 MR. BAIONI: Based upon what I've heard it seems
3 to me that you could use a system modeled after the cotton
4 warehouse receipt system where you have a provider, that's
5 the black box, and then you have agreements between those
6 that want to play the game and the black box, and then the
7 black box would authenticate the documents, and then the
8 issuer uses the holder concept, and it can continue the
9 transfer of the documents regardless of whether it's a 605
10 or bills of lading, et cetera. I think the framework is
11 already there.

12 MR. GILL: We do too, to that extent. What we
13 hear from the other commodity groups is, is that a concept
14 that is going to work for the other commodity groups, and
15 unless we're told otherwise that's how we're going to
16 start and go, and just build on that concept.

17 MR. JEFFERSON: Good morning. I have a question
18 on why there's such a focus on some of the international
19 documents. When you deal with bills of lading and you
20 look at other countries, obviously there's a lot more
21 jurisdictions, both countrywise -- as you know now with
22 the bill of lading there's U.S. Customs that can get
23 underway there. Internationally I've done a lot of work

24 in Latin America and the Far East, and I'm concerned that
25 if you try to include that in your quick writing

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1 requirements, you might in some way sort of slow your
2 process down as you start to look at that.

3 I wonder if there's a way to sort of address the
4 things that are regionalized and make an allowance for
5 some future integration, but I'm just concerned, if you
6 address that too heavily you're going to really slow down,
7 and it could be several years, as it's taken a lot of
8 other people.

9 MR. GILL: You're suggesting we start slow and
10 look at what is happening here in the United States before
11 we expand.

12 MR. JEFFERSON: I guess what I'm suggesting is,
13 when we introduce some of those you may want to either
14 have representation or all of the parties that have
15 jurisdiction involved, because there's a number of issues,
16 as many people in here can let you know about.

17 MR. GILL: Thank you.

18 Are you ready for a break? Are there any final
19 comments, questions, concerns, things we need to consider?
20 Let's see, it's a little after 11:00. We will reconvene
21 here at 1:00 and start the other session. Thank you very
22 much.

23 (Whereupon, at 11:05 a.m., the meeting recessed,
24 to reconvene later this same day.)

25

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1 AFTERNOON SESSION

2 (1:05 p.m.)

3 MR. GILL: We've got a few more slides to go
4 over this afternoon. What I would like to do is throw out
5 some concepts and then make ourselves available to the
6 different associations who will have meetings coming up in
7 the next several weeks, so we can just do one-on-one's.

8 We will be in San Diego for the National Cotton
9 Council coming up this weekend. We've been invited to the
10 UGFA meeting in March, early March, mid-March, whenever
11 that is, so you will continue to hear this concept, these
12 changes in the provisions we've worked through on the
13 warehouse side, and with that I will turn it over to Roger
14 and go from there.

15 MR. HINKLE: I'm the chief of the Warehouse
16 Authority Branch here in Washington, D.C.
17 (Slide.)

18 MR. HINKLE: I'll start out our presentation
19 first by thanking everyone that was involved from our
20 people up on the Hill to the different trade associations
21 and different individuals that relentlessly stayed hooked
22 up and didn't get worn down, and get into a rewrite of the
23 Warehouse Act finally accomplished. There's a lot of
24 people that put in a lot of time and effort in taking and
25 negotiating different things, and forming the coalitions,

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1 and moving this thing forward, and we're very much
2 appreciative of their efforts.

3 (Slide.)

4 MR. HINKLE: As we talked about a little bit
5 earlier this morning we didn't ask for this thing to
6 happen in maybe such a short turn-around, but we have kind
7 of got it now, and we're going to have to take and get
8 this thing pulled together in a short time and take and
9 try to use enough vision that maybe we will get this thing
10 done so we don't have to do anything else to it for the
11 next 50 years, so these are some of the things we're
12 facing.

13 (Slide.)

14 MR. HINKLE: A couple of things Steve Gill
15 talked about this morning, we talked about the concept of
16 taking the day-to-day type regulations that are in the
17 regs currently and move them over into more or less of a
18 licensing agreement that is kind of terms and conditions
19 of and how a warehouse can operate on a day-to-date basis
20 and leave the regulations themselves very broad in a
21 manner that they can take and cover the real issues of the
22 license itself and be able to not have to be relooked at
23 too often.

24 (Slide.)

25 MR. HINKLE: There are things that are specific
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1 to the things we will have to take and look at the regs at
2 the same time. This is going to be very much similar to
3 what we have had in the past. As far as the licensing
4 agreement itself it will be similar to what we have in the
5 cotton storage agreement or the grain and rice storage
6 agreement.

7 (Slide.)

8 MR. HINKLE: The new regs or statutes, rather,
9 took and redefined warehouses, where it's a little broader
10 than what it has been in the past.

11 (Slide.)

12 MR. HINKLE: It actually covers any type of
13 agricultural product that is involved in interstate or
14 international commerce, so that's a little broader term
15 than we're used to with grains, so we feel like we've got
16 a little broader authority than maybe we have in the past.

17 One thing that we still are -- primarily our
18 objective in this is to take and protect the depositors.
19 Currently, the protection underneath the current statutes
20 and regulations provide protection for the original
21 depositor that still has a beneficial interest, the
22 holders of warehouse or seed, or the third parties having
23 clear title to commodities that may have been purchased in
24 store. Does anybody have any thoughts that maybe we ought
25 to expand this protection to anyone else, or is this

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1 sufficient coverage for the industry is one of the
2 questions that I think we wanted to try to raise and try
3 to get some input on.

4 (Slide.)

5 MR. HINKLE: In the new statutes that improvise
6 for enforceability of arbitration -- and I think as tied
7 up as the courts are with things so cumbersome there, that

8 the different parts of the industry took and came up with
9 different ways that their members are able to settle their
10 differences without having to move through a costly court
11 battle, and this ties up funds and resources over a long
12 period of time, and so anything that is enforceable under
13 the arbitration rule that we are all in favor of and we're
14 not going to stand in the way of.

15 (Slide.)

16 MR. HINKLE: One thing that in regard to the
17 forwarding of grain from one warehouse to another one when
18 it's necessary is that they are able not only to just go
19 to a licensed house, but they will also be able to go to a
20 State-licensed house or a nonlicensed house, as long as
21 they have some type of licensing authority behind to take
22 them back up to the warehouse, that is, a public warehouse
23 operating as such, but it would be where the first time
24 that you transfer grain, or some commodity, to the
25 receiving warehouse, that a receiving warehouse will not

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1 be permitted to forward it on the second time, if it is a
2 legitimate forwarding, that it shouldn't be stopped there.

3 If you pass that, we get into a situation where
4 it leaves a lot of opportunity within the type of
5 operation where you could take and go on and you never
6 would be able to track down the grain, that we have run
7 into some problems in some of the Midwest areas that some
8 of the local trade people there call arbitrage, and it has
9 been pretty vicious in some areas of how many times this
10 grain is daisy-wheeled down the road, and so we have tried
11 to put a line there that shouldn't be crossed.

12 One thing we have done also in this new statute
13 has been a thing that has kind of been contentious for the
14 last few years, is a requirement that any grain that
15 remains in storage in the warehouse over 1 year must have
16 a warehouse receipt written on it.

17 (Slide.)

18 MR. HINKLE: So we've relaxed that, and that's
19 no longer a mandatory request or regulation.

20 (Slide.)

21 MR. HINKLE: One thing, too, that the new
22 statute allows us to do when we have different test pilots
23 and new kinds of programs we're trying out, it allows us
24 the flexibility to implement these in a timely manner if
25 they are a worthy type of program that we need to take and

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1 make permanent.

2 One such thing is like the block-stacking of
3 cotton. I know when we started out years ago that -- it's
4 probably at least 10 years ago that we started out with
5 block-stacking of cotton. It's still really a test
6 program because we haven't been able to go through the
7 regulatory process, so the new statute will give us an
8 opportunity to press these issues more rapidly.

9 (Slide.)

10 MR. HINKLE: I will talk a little bit about risk
11 management, that I think we have taken and been doing a
12 lot of, different looks of how we do business, and how our

13 licensees are doing business, and is there some other
14 things, other than bonding and financial statements, we
15 need to be looking at.

16 It's taking a warehouse operator's condition to
17 determine where he's taking care of business and able to
18 fulfill his requirements to his depositors. We've had
19 meetings with the FDIC, the Farm Credit Administration,
20 the CFTC, the SEC, a lot of different other regulatory
21 people that are using those types of risk management, and
22 we feel like there is some merit in what they're doing,
23 and we maybe can take and glean some of those areas and be
24 able to make it applicable to what we're doing and be able
25 to provide maybe a little more protection for the overall

0087

1 industry in these matters.

2 (Slide.)

3 MR. HINKLE: Currently, as the slide this
4 morning talked about, the number of licensees we have, we
5 have approximately 12,000 inspector -- well, I shouldn't
6 say inspectors, but all of these service licensees we have
7 out, which is a large number, and at times we as an agency
8 have received some criticisms of being self-certifying in
9 this, and lacking really the overview and accountability,
10 maybe, that needs to be there.

11 It seems like there is some criticism that comes
12 along pretty often on this, so we want to look at some
13 ways we can strengthen this part of our regulations in
14 regard to the service licensing program of the people that
15 weigh the scales and grade the grain and grade the cotton,
16 or pull the samples for the cotton, these type of
17 services.

18 (Slide.)

19 MR. HINKLE: I think maybe we had a slide
20 earlier this morning and this may be a little bit of a
21 repeat, but talking about spending a little bit on the
22 financial assurances of the program, that besides the
23 normal bonds and Treasury notes and things like that, that
24 we have, that we foresee being able to use letters of
25 credit and Treasury notes and anything that is legitimate

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1 that we can take and use in this regard, that we will
2 certainly take a look at, and we would like to have your
3 input to let us know what those things might be that we
4 need to be taking a look at.

5 (Slide.)

6 MR. HINKLE: Currently we require financial
7 statements yearly, and usually these things are done on a
8 year-end basis as far as the business is concerned, and
9 usually it's probably close to 3 months before they're
10 prepared and we get them, and so we're talking being out
11 15 months, really, before we have an idea of the condition
12 of that company, and we are just wondering where we need
13 to look at some other ways that during the interim time,
14 to be able to analyze where there's any big changes in the
15 warehouseman's financial strength or condition during this
16 time. Is there some other third party reports or analyses
17 that we should be using and taking into account during

18 this time?

19 (Slide.)

20 MR. HINKLE: This gives you a little bit of what
21 our current net worth requirements are for different
22 grains, talking about, and how it's calculated.

23 (Slide.)

24 MR. HINKLE: This is our bonding rates, and how
25 they're calculated on the same commodities.

0089

1 (Slide.)

2 MR. HINKLE: It's been several years since we've
3 really had any true analyzing or upgrading or adjusting to
4 our bonding and net worth requirements, and we're just
5 wondering if it's not the time and do some analysis on
6 that to see maybe where we need to strengthen that side of
7 our program, where we can make it a little stronger
8 licensing program.

9 (Slide.)

10 MR. HINKLE: Also, the new statute takes and
11 doesn't prohibit a warehouse operator entering into
12 agreement with a certain depositor to allocate a certain
13 amount of space for their use at the warehouse.

14 (Slide.)

15 MR. HINKLE: One thing that we feel like the new
16 statute allows us to do, and one that we would hope to
17 take and be able to do through the regulations themselves,
18 is to be able to take and use improved storage and
19 handling methods and have them incorporated as we go, new
20 accounting methods, business and management processes, the
21 marketing side of things.

22 (Slide.)

23 MR. HINKLE: One thing that we've kicked around
24 a little bit, voluntary licensing is what we consider
25 third parties, which we've already been doing somewhat

0090

1 with a provider agreement with our EWR providers, and as
2 this goes on a little further it should be taken and look
3 at the e-dot companies as being part of this family that
4 should be underneath the lasting program.

5 Also, should the other e-business processes that
6 facilitate the management in our merchandising of an
7 agricultural product, that involves interstate or global
8 process, be part of this group also, and are there any
9 other third party groups that we should be looking at as
10 far as expanding the licensing agreement out a little
11 farther?

12 (Slide.)

13 MR. HINKLE: One thing that we're thinking about
14 too, that is to take and try to maybe provide a little
15 more a la carte services to our licensees, and plus maybe
16 to the general public, which involves doing inventory
17 measurements for CPA firms, and doing full warehouse
18 examinations at the request of the warehousemen for
19 interim things. It wouldn't be part of the normal
20 licensing process.

21 Providing expert testimony for depositions or
22 court cases, doing outside consulting, and maybe software

23 analysis and training, or taking -- and we've been doing a
24 little bit of work in the side of the ISO and the type of
25 audits and some of the CCC programs over the last few

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1 years, and being able to take and expand that maybe over
2 into some other areas also.

3 (Slide.)

4 MR. HINKLE: One question that we have been
5 dealing with in all of the other licensing authorities,
6 and the industry also, over the last few years especially,
7 it came right in the last few months with the Starlink
8 issue and the different types of specialty grains, and I
9 took and kind of put up here what our position has been,
10 and our question to the industry as a whole is, is this
11 sufficient, or do you want to go a little bit different
12 way than what would be on these specialty grains?

13 We've always felt like a warehouseman has got to
14 take and maintain a sufficient total inventory of quantity
15 and quality for each kind of grain to prevent any measured
16 shortage in the quality or quantity, and he's got to be in
17 balance by class, subclass, or even special grades.

18 (Slide.)

19 MR. HINKLE: We use the United States grain
20 standards as the basis of what is really considered an
21 official grade. However, there is specialty regional type
22 things that will be involved that may be a little
23 different things that fits the local, regional markets.
24 The warehouseman has to maintain a daily position as a
25 total or combined, that combines all of the inventory and

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1 obligations for each kind of grain.

2 (Slide.)

3 MR. HINKLE: Now, he may keep a separate
4 position or record of the specialty grain, but he still
5 has to reflect that same quantity back into this total or
6 combined daily position record for that kind of grain.

7 (Slide.)

8 MR. HINKLE: The warehouse operators must have
9 sufficient in-store inventory to redeliver any such
10 product as identified in any special storage arrangement,
11 or as shown on the source documents which usually is a
12 scale ticket or something along that sort of thing, or
13 maybe the settlement sheets, or on the warehouse receipts.

14 (Slide.)

15 MR. HINKLE: This is kind of where we've kind of
16 been at, and trying to help the warehouseman protect
17 himself a little bit, that we felt like if things were
18 contested and carried in front of a judge or a court, that
19 if the warehouseman took and made a note on the scale
20 tickets, or in some kind of a document that was an
21 official warehouse document of some type, that this would
22 actually be, that it creates obligation for the
23 warehouseman to the depositor of that particular grain, or
24 whatever it might be, that the note in the tickets are
25 there, that would actually probably be considered as

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1 conveying an obligation to the warehouseman, which these

2 value-added crops and specialty trades can be identified
3 on a non-GMO, on a scale ticket that can take and become
4 widely controversial at times in different areas.

5 (Slide.)

6 MR. HINKLE: This is kind of a repeat of an
7 earlier slide that Steve put up on kind of the time lines
8 we're working against, and where we're trying to get the
9 regs out, and the drop-dead date is August 1. We've got
10 to have something on the street or we won't have anything
11 to operate with.

12 That is the end of what I've got prepared
13 formally, and I would take any questions that anyone might
14 have, or any statements anybody wants to make.

15 MR. GILL: Let's see, Bruce or Rebecca from
16 cotton, basically what we're saying this afternoon is,
17 we're going to have to issue a new set of regs, so this is
18 an opportunity to clean up what is in there.

19 As you heard Roger say, and you heard us say
20 this morning, we're thinking of shifting some of the
21 specifics out of the regs and into the documents and
22 licensing documents and come up with maybe a generic set
23 of regs that are broad and flexible enough to change when
24 you all need to change, and when you do change we don't
25 get caught up in this long, extended rulemaking process.

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1 That's part of what is driving our proposal in
2 terms of changing from a specific set of regs to a broad
3 set of regs. At the same time, though, it sort of gives
4 everybody the opportunity, what are some things that we
5 need to address, whether they be in the regulations or in
6 the licensing documents themselves.

7 Pretty much we're used to taking a look at the
8 CCC storage agreements, whether they be the UGRSA or the
9 cotton storage agreement that has a set of terms and
10 conditions that go with that. We're thinking of doing
11 something comparable for the licensing, the Federal
12 license program. We would move the specifics out of the
13 reg itself and put it into that kind of a document so it
14 would be somewhere. They don't have to always show up in
15 the regs, but it would be some kind of a legal document.

16 We're not sure, we're still waiting to hear from
17 the industry. We've had a couple of, I guess, sessions,
18 I'm not sure, or meetings on the specialty grain side and
19 we're still looking for some proposals from the grain
20 industry on that in terms of where we ought to go with
21 regulating specialty grains. We've had a couple of
22 meetings on that.

23 As we expand the regulations and the authority
24 on the financial assurance, what is -- right now, the
25 current statute says if you're going to be federally

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1 licensed you have to have a bond, and now the statute says
2 the Secretary determines what kind of financial assurance
3 he or she needs to grant that license, and talking about
4 the financial assurances, the letter of credits, the
5 Treasury notes, that quickly leads us into a discussion of
6 risk management practices.

7 In addition to that, if we don't require a bond
8 up front, what are the things we can be looking at that
9 Roger mentioned a few minutes ago in terms of talking to
10 other agencies who do something comparable in terms of
11 doing compliance work or the regulatory work on some of
12 those industries?

13 So those are the kinds of discussions we're
14 having internally, and so when we put together a set of
15 proposed rules you're going to see some ideas like this
16 come out. If you have some major heartburn, or some ideas
17 as to where it ought to go or not go, now is the time to
18 tell us, between now and March 24. Shoot for March 24 as
19 your time frame.

20 One thing that we have not put up here, we
21 didn't do it this morning, nor did we do it this
22 afternoon. The statute still revolves around user fees,
23 Vern Highley's favorite subject. Unfortunately one of the
24 things we were not able to get from Mr. White and others
25 up on the Hill was appropriations to administer this

0096 particular statute. It still revolves around user fees.

1 That has not changed, and will not change, so
2 one of the things we're struggling with that you're going
3 to hear us ask for comment on is, who should we assess the
4 fee to? If we're going to expand the customer base to the
5 services that we would like to provide under the new
6 statute, who should pay for that service?

7 Right now, in today's environment, there's two
8 entities that pay into the system. That is the federally
9 licensed warehouseman and the Commodity Credit Corporation
10 as the user of the system, so that's an issue that we're
11 going to continue to struggle with and talk about as we
12 progress, so that has not changed.

13 Bruce, comments?

14 MR. BENSCHODER: Bruce Benschoder Farmland Grain
15 Division. Steve, as in the past, and Roger, our industry
16 has always worked very closely with you folks in
17 developing these programs. I can only assume that once
18 again that will be the case.

19 Whatever we do, though, and whatever we come up
20 with, let's not make it a more difficult system. Let's
21 make sure we make it a simpler system to provide that
22 protection, and I think that's what we're all about to
23 start with.

24 Those issues you have raised, Roger, yes, have

25 0097 been issues in the industry for some time relative to
1 buying, relative to providing protection of the depositor,
2 is the depositor and the holder one and the same, all of
3 those issues need to be addressed.

4 All I can ask for, that is, if, in fact, you do
5 want us as part of the process, which you do, then the
6 sooner you can assemble a group of us together to address
7 those issues through the National Grain & Feed Association
8 or whatever, the sooner we can move forward with the
9 initiative, but it would seem to me that a lot of the
10 answers and a lot of the questions will derive from the e-
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12 commerce initiative at the same time, so it seems to me
13 that they have to move in parallel to some degree, so that
14 we can make sure that we do provide the protection that is
15 demanded and expected within the system, even as we move
16 into the e-commerce initiatives and do the same thing.

17 So I guess really all I can say, Steve and Roger
18 is, we're there to help. We want to be part of it,
19 obviously, but you must continue to ask as you have.

20 MR. GILL: Thanks.

21 MR. LINDEN: I'm Vern Highley with the Cotton
22 Warehouse Association. I'm really glad to hear about all
23 the progress being made.

24 I don't know how that will impact our position
25 on no user fees for State-licensed warehouses, but I'm

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1 glad to see this, because we have objected, largely
2 because we felt that there was maybe some overkill in the
3 area of examinations. When I say overkill, I mean there
4 was some undue dawdling, I think, out in the field, when
5 people would come out, that would contribute to
6 unnecessary expenses.

7 I heard something this morning that caught my
8 ear, and that was when you have an examination, warehouse
9 examination, you now have a protocol to where you can
10 maybe use e-mail or the Internet, or some way, a protocol
11 to make this more efficient, and it would be less costly.
12 I hope that also is going to apply to the State-licensed.
13 I hope that protocol will fit everybody in their
14 examinations, and we would certainly endorse that.

15 Thank you.

16 MR. GILL: Thanks. It's a lot easier to react
17 to something that is out there right now, or at least for
18 today's session we have been talking about proposals,
19 concepts. My guess is we would get a little further along
20 if we could actually show you, this is what we're going to
21 propose, so when we come out and speak we have a little
22 more meat to the bone, the concept being, build it and we
23 will come, sort of a concept.

24 Unfortunately we're not in that position, to
25 hand you a document today saying, this is sort of the

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1 proposed rule, or draft proposed rule we want you to react
2 to, but that's the next step we have to go through, is to
3 come up with a draft proposed rule to start getting some
4 more specific comments and feedback to where we actually
5 want to go.

6 If I'm federally licensed and currently have to
7 provide the bond, I would be interested to know from the
8 Department, will you look at my financial statement? If I
9 have a strong financial statement, will that do, so I
10 don't have to go out and buy a bond or do the expenses in
11 terms of a letter of credit and that kind of stuff, so
12 those are the kinds of things we're going to have to work
13 through here rather quickly.

14 It's easy to say, but how far do we actually
15 carry it, and we, too, have to get comfortable with that
16 concept. Well, not the concept, but what do we do to

17 protect depositors of the warehouse, so it is a little bit
18 of a learning process as we go through this.

19 Any other comments, questions? Are there some
20 things that you were hoping we would bring up in terms of
21 areas that we should be touching on that you didn't hear
22 specifically? No? Okay.

23 That's all I have. That's it for this
24 afternoon, so thank you for coming. Thanks for sticking
25 with us for the afternoon. We appreciate you being here,

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1 and we will be knocking on your doors or calling you on
2 the telephone to continue the dialogue, so thanks again.

3 (Whereupon, at 1:40 p.m., the meeting
4 adjourned.)

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